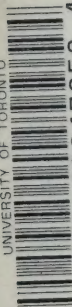


UNIVERSITY OF TORONTO



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THE QUEEN'S REGULATIONS AND ORDERS FOR THE ROYAL CANADIAN NAVY



VOLUME II (Disciplinary)

Issued under the Authority of The National Defence Act

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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FOR THE
ROYAL CANADIAN NAVY

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QUEEN'S PRINTER
OTTAWA, CANADA

TABLE OF CONTENTS

VOLUME II

CHAPTER	TITLE	ARTICLES
101	<i>General Provisions Respecting the Code of Service Discipline</i>	101.01—101.99
102	<i>Disciplinary Jurisdiction</i> Section 1—Jurisdiction—Persons..... Section 2—Jurisdiction Barred..... Section 3—Jurisdiction—Place..... Section 4—Jurisdiction—Time..... Section 5—Jurisdiction—Certain Offences..... Section 6—Jurisdiction of Civil Courts.....	102.01—102.16 102.17—102.19 102.20—102.21 102.22 102.23 102.24—102.99
103	<i>Service Offences</i> Section 1—General Principles Concerning Responsibility for Offences..... Section 2—Service Offences.....	103.01—103.04 103.05—103.99
104	<i>Punishments and Sentences</i> Section 1—Explanation..... Section 2—Punishments..... Section 3—Sentences.....	104.01 104.02—104.13 104.14—104.99
105	<i>Custody Before Conviction</i> Section 1—Explanation..... Section 2—Placing Under Arrest..... Section 3—Close Custody..... Section 4—Open Custody..... Section 5—Special Provisions.....	105.01—105.02 105.03—105.12 105.13—105.29 105.30—105.32 105.33—105.99
106	<i>Preparation of Charge Forms</i> Section 1—Explanation..... Section 2—Preparation of Charge Reports..... Section 3—Preparation of Charge Sheets.....	106.01—106.03 106.04—106.09 106.10—106.99
107	<i>Investigation and Preliminary Disposition of Charges</i>	107.01—107.99
108	<i>Summary Trials by Commanding Officers</i> Section 1—Introductory..... Section 2—Trial by Delegated Officer..... Section 3—Trial by Commanding Officer..... Section 4—Punishment Warrants and Approval of Punishments..... Section 5—Rules Respecting Punishments Imposed at Summary Trial.....	108.01—108.09 108.10—108.24 108.25—108.38 108.39—108.43 108.44—108.99
109	<i>Application for Disposal of Charges by Higher Authority</i>	109.01—109.99
110	<i>Summary Trial by Superior Commander</i> (Reserved for Army and R.C.A.F.)	

TABLE OF CONTENTS—*Concluded*

CHAPTER	TITLE	ARTICLES
111	<i>Convening and Powers of Courts Martial</i> Section 1—Reserved for Army and R.C.A.F. Section 2—Convening of Courts Martial..... Section 3—General Courts Martial..... Section 4—Disciplinary Courts Martial..... Section 5—Forwarding of Documents..... Section 6—Preparation for Trial.....	111.05—111.15 111.16—111.34 111.35—111.49 111.50—111.59 111.60—111.99
112	<i>Trial Procedure at General and Disciplinary Courts Martial</i> Section 1—Introductory..... Section 2—Order of Procedure..... Section 3—Admission to Courts Martial..... Section 4—Objections by accused and Oaths to be Administered..... Section 5—Plea in Bar of Trial and Pleas to Charge Section 6—Procedure Generally..... Section 7—Findings..... Section 8—Procedure After Finding of Guilty..... Section 9—Responsibility of Court, Judge Advocate, Prosecutor and Accused..... Section 10—Opening Addresses and Evidence of Witnesses..... Section 11—Rules of Evidence.....	112.01—112.04 112.05—112.09 112.10—112.13 112.14—112.23 112.24—112.27 112.28—112.39 112.40—112.46 112.47—112.53 112.54—112.58 112.59—112.675 112.68—112.99
113	<i>Standing Courts Martial</i> (Reserved for Army and R.C.A.F.) <i>Special General Courts Martial</i> <i>Standing Courts Martial</i>	113.01—113.99 "AL 27"
114	<i>Provisions Applicable to Findings and Sentences After Trial</i> Section 1—Introduction..... Section 2—Commencement of Punishment..... Section 3—Findings..... Section 4—Alteration of Punishments..... Section 5—General Provisions Respecting New Punishments..... Section 6—Suspension of Imprisonment or Detention..... Section 7—General Provisions Respecting Incarceration..... Section 8—Commanding Officers.....	114.01—114.04 114.05—114.14 114.15—114.24 114.25—114.29 114.30—114.34 114.35—114.39 114.40—114.54 114.55—114.99
115	<i>Appeals from Courts Martial</i>	115.01—115.99
116	<i>Review of Courts Martial</i>	116.01—116.99
117	<i>Petition for New Trial</i>	117.01—117.99

APPENDIX

- XI *The National Defence Act*
 XII *The Visiting Forces (British Commonwealth) Act, 1933*
 XIII *The Visiting Forces (United States of America) Act*
 XIV *The Rules of Appeal Procedure*
 XV *Order-in-Council relating to Payment of Defence Counsel for Accused Persons*

~~XVI TO XX INCLUSIVE: NOT ALLOCATED~~

XVI *Regulations for Service Prisons and Detention Barracks*

~~XVII—XX INCLUSIVE: NOT ALLOCATED~~

"AL 27"

CHAPTER 101

GENERAL PROVISIONS RESPECTING THE CODE OF
SERVICE DISCIPLINE

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

101.01—MEANING OF “COMMANDING OFFICER”

For the purposes of proceedings under the Code of Service Discipline, “commanding officer”:

- (a) means, in addition to the officers mentioned in paragraph (xv) of article 1.02 (Definitions) and subject to any limitations prescribed by the Chief of the Naval Staff:
 - (i) an officer in immediate command of persons on detached service on shore or otherwise;
 - (ii) when a tender is absent from the ship to which it is attached, the officer in command of the tender;
 - (iii) when ships’ boats are away on detached service for long periods, the officer in command of the boats; and
 - (iv) an officer, not below the rank of commander, appointed by the Chief of the Naval Staff to act as a commanding officer; and
- (b) includes in relation to an accused person
 - (i) the commanding officer of the ship or fleet establishment to which the accused belongs;
 - (ii) the commanding officer of the ship, fleet establishment or other place in which the accused is present when any proceedings in respect of him are taken under the Code of Service Discipline; and
 - (iii) when the accused is a commanding officer, the next superior officer to whom he is responsible in matters of discipline.

(M)

101.015—MEANING OF “DISMISSED”

For the purpose of proceedings under the Code of Service Discipline, “dismissed” refers to a formal decision by a competent authority that a charge should not be further proceeded with. A charge may be dismissed at any time before a finding of not guilty or guilty has been made.”

(G) (PC 56/1525 of 17 Mar 52) (NS 4255-1) (17 Mar 52)

NOTES

- (A) A court martial has no power to dismiss charges.
- (B) A dismissal of a charge operates under Section 57 of *The National Defence Act* as a plea in bar of trial. (See article 102.17—“Previous Acquittal on Conviction”.)

(M)

101.02—HOW RANKS TO BE CONSTRUED

For the purpose of proceedings under the Code of Service Discipline, every reference to the rank of an officer or man means the highest rank he holds, whether substantive, or acting, exclusive of honorary rank.

(G)

101.03—EFFECT OF NOTES

The notes appended to articles in QRCN are for the guidance of officers and men. They shall not be construed as if they had the force and effect of law, but they should not be deviated from, without good reason.

(M)

NOTES

- (A) The notes are based upon decisions of the civil courts, principles stated in legal text-books and opinions of service legal authorities.

(M)

101.04—JUDICIAL NOTICE

In any proceedings under the Code of Service Discipline, a service tribunal may take judicial notice of:

- (a) Acts of the Parliament of Canada;
- (b) QRCN, QR(Army) and QR(Air);
- (c) orders and instructions issued in writing to the navy by the Chief of the Naval Staff;
- (d) all matters within the general military knowledge of the court;
- (e) the ordinary course of nature;
- (f) the existence of an emergency recognized by the Government of Canada; and
- (g) a Service, component or unit being on active service.

although no evidence or reference to these matters has been given or made during the proceedings.

(M)

NOTES

- (A) The right of the court to take judicial notice of the matters mentioned in this article means that the court may take such matters into account as if they had been proved in evidence.
- (B) Examples of matters of which the court could take judicial notice under (d) are the following:
 - (i) the relative rank of officers and men,
 - (ii) the general duties, authority and obligations of officers and men, having regard to rank, appointment and status.
- (C) When, under (g) of this article, the court takes judicial notice of the fact that the unit to which the accused belongs or is attached or seconded is on active service, it follows from section 32(2) of *The National Defence Act* that the accused was on active service.

(M)

101.05—PRESUMPTION AS TO OWNERSHIP OF PROPERTY

For the purposes of proceedings under the Code of Service Discipline:

- (a) the fact that any property, except non-public property and the personal property of officers and men, is provided for, or used by or in any department of the Government of Canada, the Canadian Forces or the Defence Research Board, shall be evidence that it is public property; and
- (b) the fact that any property is provided for or used by or in
 - (i) any of His Majesty's Forces, other than the Canadian Forces, or
 - (ii) any forces co-operating with His Majesty's Forces,
 shall be evidence that it is the property of the forces for which it is provided or by or in which it is used.

(M)

NOTE

- (A) The following is an example of the operation of this article. A charge is laid of wilfully destroying public property, namely, one Mark IV Range Finder, under section 106 (a) of *The National Defence Act*. Were it not for this article, it would be necessary to prove positively that the thing destroyed was "public property", i.e., was owned by His Majesty in right of Canada. The difficulty of proving this is apparent. Under this article, once the circumstances of use are established, a presumption is set up that the article is public property. The presumption is, of course, rebuttable.

(M)

101.06—EFFECT OF IRREGULARITIES IN PROCEDURE

(1) A finding made or a sentence passed by a service tribunal shall not be invalid by reason only of deviation from the procedure prescribed in KRCN, unless it appears that injustice has been done to the accused person by such deviation.

(2) Nothing in paragraph (1) shall be construed as relieving an officer or man of the consequences of contravention of the provisions of KRCN.

(M)

NOTES

- (A) Paragraph (1) is intended to prevent the ends of justice being defeated in consequence of defects, usually of a technical nature, in matters of procedure which do not affect the merits of the case.
- (B) For the effect of deviation from forms, see article 1.11.

(M)

101.07—CASES NOT PROVIDED FOR IN KRCN

When, in any proceedings under the Code of Service Discipline, a situation arises that is not provided for in KRCN or in orders or instructions issued to the navy by the Chief of the Naval Staff, the course that seems best calculated to do justice shall be followed.

(M)

101.08—CONFESSIONS AND ADMISSIONS BY ACCUSED

(1) A statement in the nature of a confession or an admission made by an accused person shall not be admitted in evidence at any trial by a service tribunal unless the prosecution proves that it was free and voluntary.

(2) The fact that the statement was obtained by a superior officer or by a person in authority shall not of itself be evidence that the statement was made otherwise than freely and voluntarily.

(M)

NOTES

(A) Immediately a charge has been laid against an accused a caution in the following form should be administered before any statement is taken from him:

"You are not obliged to say anything. You have nothing to fear from any threat and you have nothing to hope from any promise whether or not you do say anything, but anything you say may be taken down in writing and may be used as evidence. Do you fully understand this warning?"

If no specific charge has been laid against a person but it is suspected that he may be implicated in an offence, or if the person is held in custody on a charge and is being reinterrogated, the following form of caution should be used before a statement is taken from that person:

"Before you say anything relating to any charge which has been or may be preferred against you, you are advised that you are not obliged to say anything. You have nothing to fear from any threat and you have nothing to hope from any promise whether or not you do say anything, but anything you say may be taken down in writing and may be used as evidence. Do you fully understand this warning?"

(B) The fact that a caution has or has not been administered in accordance with Note (A) will not of itself render the confession or admission admissible or inadmissible. It will always be a question of fact as to whether any confession was freely and voluntarily made.

(M)

101.09—JOINT TRIALS

(1) Except as provided in (2) of this article, accused persons shall not be tried together by court martial.

(2) The Minister or an officer appointed by him for that purpose, may order that any number of accused persons be charged jointly and tried together by court martial for an offence alleged to have been committed by them collectively.

(3) When, in pursuance of an order made under (2) of this article, a court martial is convened to try persons charged jointly, an accused person may apply to the authority who convened the court martial to be tried separately, on the ground that the evidence of one or more of the accused persons whom it is proposed to try with him will be material to his defence. If the authority to whom application is made is satisfied that the application is well founded, he shall convene a separate court martial for the trial of the applicant.

(M)

101.09—JOINT TRIALS—(Cont'd)

NOTES

- (A) The many and serious complications involved in trial of persons charged jointly make it undesirable that more than one person at a time be tried by a single court martial. Application for the joint trial of two or more persons by a court martial should only be made when special circumstances indicate that this may be the proper course to follow.
- (B) The provisions of this article apply only to courts martial but commanding officers should not, without special reasons for so doing, try two or more persons together.
- (M)

101.10—LOSS OF MINUTES OF PROCEEDINGS OF COURT MARTIAL

If, at any time, the original minutes of the proceedings of a court martial or any part of the original minutes is lost, a valid and sufficient record of the trial for all purposes may be made:

- (a) by the signature of the president or of the judge advocate at the trial being affixed to a copy of the minutes; or
- (b) if there is no copy of the minutes, by the president or judge advocate stating in writing the substance of the charge, finding, sentence, and transactions of the court, the statement being authenticated by the signatures of the members of the court.

(M)

101.11—LOGGING CONDUCT OF OFFICERS

(1) Logging is a record of conduct of an officer which in the opinion of the Captain, while it is not sufficiently reprehensible to warrant trial by court martial, should be recorded to permit its being taken into account by the court in determining the sentence if the officer is subsequently tried and convicted by a court martial for another offence committed in the same ship or fleet establishment.

(2) When the Captain decides to log the conduct of an officer he shall:

- (a) have a statement of the facts prepared on the day of logging;
- (b) arrange to have the officer read the statement and sign it;
- (c) cause the statement to be entered in the Ship's Log when the book is closed for the month and out of general use;
- (d) arrange for the officer to sign the entry in the Ship's Log as soon as made;
- (e) certify the statement to be a true copy of the entry in the Ship's Log; and
- (f) retain the certified copy for use at any subsequent court martial as prescribed in (1) of this article.

(3) In shore establishments where no Ship's Log is carried, subparagraphs (c), (d) and (e) of paragraph (2) do not apply.

(4) If the Captain decides that a permanent record should be made, he shall send a report of the logging to the Senior Officer in Chief Command (through the Senior Officer in Command when applicable) for a decision as to whether it shall be reported to Naval Headquarters.

101.11—LOGGING CONDUCT OF OFFICERS—(Cont'd)

(5) When the ship is paid off, the Captain shall cause the copy retained under (2)(f) of this article to be destroyed.

(6) Logging is not a punishment, but conduct for which an officer is logged should not subsequently form the subject of a charge.

(C)

(6 May 57)

(101.12 TO 101.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 102

DISCIPLINARY JURISDICTION

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

Section 1 — Jurisdiction — Persons**102.01—PERSONS SUBJECT TO THE CODE OF SERVICE DISCIPLINE**

The National Defence Act provides:

“56. (1) The following persons, and no others, are subject to the Code of Service Discipline:

- (a) an officer or man of the regular forces;
- (b) an officer or man of the active service forces;
- (c) an officer or man of the reserve forces when he is
 - (i) undergoing drill or training whether in uniform or not,
 - (ii) in uniform,
 - (iii) on duty,
 - (iv) called out under subsection (2) of section 35 to render assistance in a disaster,
 - (v) called out under Part XI in aid of the civil power,
 - (vi) called out on service,
 - (vii) placed on active service,
 - (viii) in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence,
 - (ix) serving with any unit or other element of the regular forces or the active service forces, or
 - (x) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces;
- (d) subject to such exceptions, adaptations, and modifications as the Governor in Council may by regulations prescribe, a person who pursuant to law is attached or seconded as an officer or man to a Service of the Canadian Forces;
- (e) a person, not otherwise subject to the Code of Service Discipline, who is serving in the position of an officer or man of any force raised and maintained out of Canada by Her Majesty in right of Canada and commanded by an officer of the Canadian Forces;
- (f) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place;
- (g) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person attending an institution established under section 45;
- (h) an alleged spy for the enemy;
- (i) a person, not otherwise subject to the Code of Service Discipline, who, in respect of any service offence committed or alleged to have been committed by him, is in civil custody or in service custody; and
- (j) a person, not otherwise subject to the Code of Service Discipline, while serving with a Service of the Canadian Forces under an engagement with the Minister whereby he agreed to be subject to that Code.

**102.01—PERSONS SUBJECT TO THE CODE OF SERVICE DISCIPLINE—
(Cont'd)**

(2) Every person subject to the Code of Service Discipline under subsection (1) at the time of the alleged commission by him of a service offence continues to be liable to be charged, dealt with and tried in respect of that offence under the Code of Service Discipline notwithstanding that he may have, since the commission of that offence, ceased to be a person mentioned in subsection (1).

(3) Every person who, since the alleged commission by him of a service offence, has ceased to be a person mentioned in subsection (1), shall for the purposes of the Code of Service Discipline be deemed, for the period during which under that Code he is liable to be charged, dealt with and tried, to have the status and rank that he held immediately prior to the time when he ceased to be a person mentioned in subsection (1)."

(C)

102.02—OFFICERS AND MEN DEALT WITH BY OWN SERVICE

The National Defence Act provides:

"56. (4) Subject to subsections 5 (*article 102.03—“Attachment and Secondment—General”*) and 6 (*article 102.06—“Persons Embarked on Vessels and Aircraft—General”*), every officer or man who is alleged to have committed a service offence may be charged, dealt with and tried only within the Service of the Canadian Forces in which he is enrolled."

(C)

102.03—ATTACHMENT AND SECONDMENT—GENERAL

The National Defence Act provides:

"56. (5) Every officer or man who, while attached or seconded to a Service of the Canadian Forces other than the Service in which he is enrolled, is alleged to have committed a service offence, may be charged, dealt with and tried either within that other Service, as if he were an officer or man thereof, or within the Service in which he is enrolled."

(C)

102.04—OFFICERS AND MEN OF OTHER SERVICES ATTACHED OR SECONDED TO THE NAVY

(1) When an officer or man of the army or the air force, while attached or seconded to the navy, is alleged to have committed a service offence, a commanding officer, before initiating disciplinary action, should, where practicable and if the discipline of his unit will not be prejudiced, cause the matter to be referred to an officer of the Service of the alleged offender with a view to ascertaining whether or not that Service wishes to deal with the case, and, when it so wishes, the commanding officer should, unless other circumstances intervene, take steps to deliver the officer or man over to that Service.

(2) When an officer or man of another Service is convicted within the navy, he may be awarded any punishment in the scale of punishments which could have been awarded if he had been tried within his own Service. (*See article 114.08—“Approval of Dismissal With Disgrace or Dismissal”*.)

(G)

102.05—OFFICERS AND MEN OF OTHER COMMONWEALTH FORCES ATTACHED OR SECONDED TO THE ROYAL CANADIAN NAVY

See The Visiting Forces (British Commonwealth) Act, 1933, Statutes of Canada, 23-24 Geo V, Chap 21—(*Appendix XII*).

(C)

102.06—PERSONS EMBARKED IN VESSELS AND AIRCRAFT—GENERAL

The National Defence Act provides:

“56. (6) Every officer or man who, while embarked on any vessel or aircraft of a Service of the Canadian Forces other than the Service in which he is enrolled, is alleged to have committed a service offence, may be charged, dealt with and tried either within that other Service, as if he were an officer or man thereof, or within the Service in which he is enrolled.”

(C)

102.07—OFFICERS AND MEN OF OTHER SERVICES EMBARKED IN VESSELS OR AIRCRAFT OF THE NAVY

An officer or man of the army or air force who, while embarked on any vessel or aircraft of the navy, is alleged to have committed a service offence, shall be dealt with in the same manner as is provided in article 102.04 (Officers And Men Of Other Services Attached Or Seconded To The Navy).

(G)

102.08—PERSONS SERVING IN POSITIONS OF OFFICERS AND MEN IN FORCES RAISED OUT OF CANADA BY CANADA

The National Defence Act provides:

“56. (7) Every person serving in the circumstances set forth in paragraph (e) of subsection (1) (*article 102.01*) who, while so serving, is alleged to have committed a service offence, may be charged, dealt with and tried within that Service of the Canadian Forces in which his commanding officer is serving.”

(C)

102.09—PERSONS ACCOMPANYING CANADIAN FORCES

(1) Section 56 of the *National Defence Act* provides in part:

“56. (1) The following persons, and no others, are subject to the Code of Service Discipline:

(f) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place; . . .

(7a) For the purposes of this section, but subject to any limitations prescribed by the Governor in Council, a person accompanies a unit or other element of the Canadian Forces that is on service or active service if such person

(a) participates with that unit or other element in the carrying out of any of its movements, manoeuvres, duties in aid of the civil power, duties in a disaster, or warlike operations,

(b) is accommodated or provided with rations at his own expense or otherwise by

102.09—PERSONS ACCOMPANYING CANADIAN FORCES—(Cont'd)

that unit or other element in any country or at any place designated by the Governor in Council,

(c) is a dependent out of Canada of an officer or man serving beyond Canada with that unit or other element, or

(d) is embarked on a vessel or aircraft of that unit or other element.

(8) Every person mentioned in paragraph (f) of subsection (1) who, while accompanying any unit or other element of the Canadian Forces, is alleged to have committed a service offence, may be charged, dealt with and tried within the Service in which is comprised the unit or other element of the Canadian Forces that he accompanies, and for that purpose shall be treated as a man, unless he holds from the commanding officer of the unit or other element of the Canadian Forces that he so accompanies or from any other officer prescribed by the Minister for that purpose, a certificate, revocable at the pleasure of the officer who issued it or of any other officer of equal or higher rank, entitling such person to be treated on the footing of an officer, in which case he shall be treated as an officer in respect of any offence alleged to have been committed by him while holding that certificate.

(9) Every person mentioned in subsection (8) shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Service of the Canadian Forces that such person accompanies.”.

(2) For the purposes of paragraph (b) of subsection (7a) of section 56 of the *National Defence Act*, any country, except Canada, in which any unit or other element of the Canadian Forces is on service or active service is designated as a country in which a person accompanies a unit or other element of the Canadian Forces.

(See article 105.095—“Arrest and Hand-over of Dependents”).

(G) (P.C. 1956-606 of 19 Apr 56) (19 Apr 56)

(102.10: NOT ALLOCATED)**102.11—PERSONS ATTENDING EDUCATIONAL INSTITUTIONS**

(1) Every officer and man attending an educational institution referred to in paragraph (g) of subsection one of section fifty-six of *The National Defence Act* (article 102.01) shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the officer in command of that educational institution.

(2) When an officer or man, while attending an educational institution, is alleged to have committed a service offence and the officer in command of that institution is a member of a Service other than the Service in which the alleged offender is enrolled, that officer in command shall deal with the case and shall in every respect have the same powers as if he were a commanding officer in the Service in which the alleged offender is enrolled.

(3) When in the circumstances referred to in (2) of this article, the alleged offender is remanded for trial by court martial, the officer in command shall apply to the appropriate authority of the Service in which the alleged offender is enrolled for the convening of the court martial.

(4) A person who attends an educational institution, otherwise than as an officer or man, shall not be subject to the Code of Service Discipline.

(G)

102.12—SPIES FOR THE ENEMY

The National Defence Act provides:

“56. (10) Every person mentioned in paragraph (h) of subsection (1) (*see article 102.01*) may be charged, dealt with and tried within the Service of the Canadian Forces in which he is at any time held in custody and shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of such unit or other element of that Service as may be holding him in custody from time to time.”

(C)

102.13—RELEASED PERSONS SERVING SENTENCE

The National Defence Act provides:

“56. (11) Every person mentioned in paragraph (i) of subsection (1) (*article 102.01*) who is alleged to have committed, during the currency of his imprisonment or detention, a service offence, may be charged, dealt with and tried within the Service of the Canadian Forces that controls or administers the service prison or detention barrack to which he has been committed, and shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of that service prison or detention barrack, as the case may be.”

(C)

102.14—PERSONS UNDER SPECIAL ENGAGEMENT

The National Defence Act provides:

“56. (12) Every person mentioned in paragraph (j) of subsection (1) (*article 102.01*) who, while serving with a Service of the Canadian Forces, is alleged to have committed a service offence, may be charged, dealt with and tried within that Service and for that purpose he shall be treated as a man, unless the terms of the agreement under which he was engaged entitle him to be treated as an officer, in which case he shall be treated as an officer.

(13) Every person mentioned in subsection (12) shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Service of the Canadian Forces in which that person is serving.”

(C)

102.15—WOMEN

The National Defence Act provides:

“56. (14) The Code of Service Discipline, in its application to female persons, may be limited or modified by regulations made by the Governor in Council.”

(C)

102.16—ARTICLES RELATING TO WOMEN

Attention is directed to the following articles:

- (a) article 105.25 (Special Conditions of Custody of Women); and
- (b) article 104.08(2) (Detention).

(C)

Section 2 — Jurisdiction Barred**102.17—PREVIOUS ACQUITTAL OR CONVICTION**

The National Defence Act provides:

“57. (1) Every person, in respect of whom a charge of having committed a service offence has been dismissed, or who has been found guilty or not guilty either by a service tribunal or a civil court on a charge of having committed any such offence, shall not be tried or tried again by a service tribunal under this Act in respect of that offence or any other offence of which he might have been found guilty on that charge by a service tribunal or a civil court.

(2) Nothing in subsection (1) affects the validity of a new trial ordered or directed under section 172A, 191 (*new trial directed by Court Martial Appeal Board*) or 199 (*new trial ordered by Chief of Staff on ground of newly discovered evidence*).”.

(C)

102.175—ACCUSED INSANE AT TRIAL

(1) *The National Defence Act* provides:

“166. (1) Where at any time after a trial by court martial commences and before the finding of the court martial is made, it appears that there is sufficient reason to doubt whether the accused person is then, on account of insanity, capable of conducting his defence, an issue shall be tried and decided by that court martial as to whether the accused person is or is not then, on account of insanity, unfit to stand or continue his trial.

(2) Where the decision of the court martial on an issue mentioned in subsection (1) is that the accused person is not then unfit to stand or continue his trial, the court martial shall proceed to try that person as if no such issue had been tried.

(3) Where the decision of a court martial held in Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order the accused person to be kept in strict custody, and he shall be kept in custody until the pleasure of the Lieutenant-Governor of the province is known and the Lieutenant-Governor may make an order for the safe custody of such person, as if the same decision had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

(4) Where the decision of a court martial held out of Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be kept in custody until the pleasure of the Lieutenant-Governor of the province is known and the Lieutenant-Governor may make an order for the safe custody of such person, as if the same decision had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit.

(5) No decision of a court martial that an accused person is unfit to stand or continue his trial by reason of insanity prevents that person being afterwards

102.175—ACCUSED INSANE AT TRIAL—(Cont'd)

tried in respect of the offence or of any other offence of which he might have been found guilty on the same charge; and the period during which he is unfit to stand or continue his trial by reason of insanity shall not be taken into account in applying to him in respect of that offence the provisions of section 60.”.

(2) If the court finds that the accused is insane at the trial, it shall notify the convening authority to that effect and the convening authority shall comply with (1) of this article.

(M)

102.18—OTHER OFFENCES DISPOSED OF AT PREVIOUS TRIAL

The National Defence Act provides:

“57. (3) Every person who under section 163 (*article 112.48—“Similar Offence may be Admitted and Dealt with”*) has been sentenced in respect of a service offence admitted by him shall not be tried by a service tribunal under this Act in respect of that offence.”.

(C)

102.19—CIVILIANS NOT LIABLE TO SUMMARY TRIAL

A person who is subject to the Code of Service Discipline, but who is not an officer or man, is not liable to summary trial.

(G)

Section 3 — Jurisdiction — Place**102.20—PLACE OF COMMISSION OF OFFENCE**

The National Defence Act provides:

“58. Subject to section 61, every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, whether the alleged offence was committed in Canada or out of Canada.”.

(C)

102.21—PLACE OF TRIAL

The National Defence Act provides:

“59. Every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, either in Canada or out of Canada.”.

(C)

Section 4 — Jurisdiction — Time**102.22—PERIOD OF LIABILITY UNDER CODE OF SERVICE DISCIPLINE**

The National Defence Act provides:

“60. (1) Except in respect of the service offences mentioned in subsection (2), no person is liable to be tried by a service tribunal unless his trial begins before the expiration of a period of three years from the day upon which the service offence was alleged to have been committed.

**102.22—PERIOD OF LIABILITY UNDER CODE OF SERVICE DISCIPLINE
—(Cont'd)**

(2) Every person, subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence of mutiny, desertion or absence without leave or a service offence for which the highest punishment that may be imposed is death, continues to be liable to be charged, dealt with and tried at any time under the Code of Service Discipline.

(3) In calculating the period of limitation referred to in subsection (1), there shall not be included

- (a) time during which a person was a prisoner of war,
- (b) any period of absence in respect of which a person has been found guilty by any service tribunal of desertion or absence without leave, and
- (c) any time during which a person was serving a sentence of incarceration imposed by any court other than a service tribunal.”.

(C)

Section 5—Jurisdiction—Certain Offences**102.23—MURDER, RAPE, AND MANSLAUGHTER**

The National Defence Act provides:

“61. A service tribunal shall not try any person charged with an offence of murder, rape or manslaughter, committed in Canada.”.

(C)

Section 6—Jurisdiction of Civil Courts**102.24—TRIAL OF OFFICERS AND MEN BY CIVIL COURTS**

(1) *The National Defence Act* provides:

“62. (1) Nothing in the Code of Service Discipline affects the jurisdiction of any civil court to try a person for any offence triable by that court.

(2) Where a person, sentenced by a service tribunal in respect of a conviction on a charge of having committed a service offence, is afterwards tried by a civil court for the same offence or for any other offence of which he might have been found guilty on that charge, the civil court shall in awarding punishment take into account any punishment imposed by the service tribunal for the service offence.

(3) Where a civil court that tries a person in the circumstances set out in subsection (2) either acquits or convicts the person of an offence, the unexpired term of any punishment of imprisonment for more than two years, imprisonment for less than two years or detention, imposed by the service tribunal in respect of that offence, shall be deemed to be wholly remitted as of the date of the acquittal or conviction by that civil court.”.

(2) Section 217B of *the National Defence Act* provides:

“217B. Where an offence under this Act is committed outside Canada, any civil court in Canada that would have jurisdiction to try the offender for that offence if it had been committed within the territorial jurisdiction of that court may try the offender for that offence.”.

(C)

(102.25 TO 102.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 103

SERVICE OFFENCES

*(Refer carefully to article 1.02 (Definitions)
when reading every regulation in this chapter.)*

Section 1—General Principles Concerning Responsibility for Offences**103.01—RESPONSIBILITY FOR OFFENCES**

The National Defence Act provides:

- “63. (1) Every person is a party to and guilty of an offence who
- (a) actually commits it;
 - (b) does or omits an act for the purpose of aiding any person to commit the offence;
 - (c) abets any person in commission of the offence; or
 - (d) counsels or procures any person to commit the offence.

(2) Every person who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit such offence or not.” *(See section 118(4) in article 103.60—“Conduct to the Prejudice of Good Order and Discipline”).*

(M)

NOTES

- (A) A person who, while subject to the Code of Service Discipline, aids, abets, counsels or procures another to commit a service offence is guilty of committing that offence himself, whether or not he is present when the offence is committed.
- (B) Aiding or abetting the commission of an offence involves actual participation or assistance. Mere knowledge of another's intention or plans to commit an offence, or mere standing by while the offence is being committed, is not enough to make a person guilty of that particular offence; but this does not exclude the possibility that that person may have committed a different offence by having failed to take preventive measures.
- (C) One who supplies the means for the commission of an offence, knowing of its intended use, is guilty of the offence if it is committed.
- (D) Assistance given after the commission of an offence does not make the person assisting guilty of the offence, if he is not shown to have been associated previously in the commission of the offence; but if the assistance is rendered while some act is being done which enters into the offence, although the offence might be complete without it (e.g., taking away and concealing the proceeds of a theft), it may amount to aid rendered in the actual commission of the offence.
- (E) Section 63(1) of the National Defence Act contemplates an offence actually committed by someone. It therefore follows that where no offence is committed by anyone, a person is not rendered liable as a principal merely because he has counselled another to commit an offence, but he may thereby have committed an offence under section 118. *(See article 103.60—“Conduct to the Prejudice of Good Order and Discipline”).*
- (F) The statement of the offence in a charge sheet in cases of aiding, abetting, counselling or procuring should be in the form prescribed for the offence committed by the actual perpetrator. The fact of aiding, abetting, counselling or procuring should be stated in the particulars of the offence.

103.01—RESPONSIBILITY FOR OFFENCES—(Cont'd)

- (G) In most cases attempts may be charged only under section 118 (*article 103.60—“Conduct to the Prejudice of Good Order and Discipline”*)—but exceptions are to be found in section 75 (*article 103.17—“Striking or Offering Violence to a Superior Officer”*), section 79 (*article 103.21—“Desertion”*), section 92 (*article 103.34—“Escape from Custody”*) and section 119 (*article 103.61—“Offences Punishable by Ordinary Law”*). These are three essential elements of an attempt:
- (i) An intent to commit the offence.
 - (ii) An act or omission towards the commission of the offence. An intent alone is not sufficient if nothing is done to carry it into effect. A distinction must, however, be drawn between acts or omissions toward the commission of an offence and those which are mere preparation. If it is not possible to draw a clear line of distinction but, in general, preparation consists in devising or arranging the means for the commission of an offence while, on the other hand, an act or omission sufficient to support a charge of attempting must involve a direct movement towards the commission of an offence after the preparations have been made. For example, a person, having an intent to set fire to a building, might purchase matches for the purpose. The purchase would merely be a stage in his preparations and not such an act as to justify a charge of attempting. An example of an act justifying a charge of attempting would be the application of a lighted match to the building.
 - (iii) Non-completion of the offence. If the actual offence is committed, the alleged offender cannot be convicted of attempting to commit the offence. If, before a charge of attempting is proceeded with, there is any doubt as to whether the complete offence was or was not committed, it is advisable to charge the alleged offender in the alternative, i.e., with having committed an offence of attempting under section 118 (*article 103.60—“Conduct to the Prejudice of Good Order and Discipline”*). In cases involving striking or using violence against a superior officer (*section 75—article 103.17*) and desertion (*section 79—article 103.21*), when there is doubt as to whether the complete offence was committed, an alleged offender should be charged with commission of the complete offence only. In such a case, by virtue of section 120 (*article 103.62—“Conviction of Related or Less Serious Offence”*) it is possible for the accused to be found guilty of attempting if the commission of the complete offence is not established. A further exception is to be found in cases of escaping from custody (*section 92—article 103.34*). Section 120 does not apply to section 92 and, therefore, since 92 contains a specific offence of attempting, it would not be possible to lay an alternative charge of attempting under section 118. If it is desired to allege escaping and attempting to escape in the alternative, alternative charges must be laid under section 92 itself.

(M)

103.02—IGNORANCE OF LAW NO EXCUSE

The National Defence Act provides:

“124. The fact that a person is ignorant of the provisions of this Act, or of any regulations or of any order or instruction duly notified under this Act, is no excuse for any offence committed by him.”

(M)

NOTES

- (A) Section 124 of *The National Defence Act* relates only to ignorance of the law and not to mistakes of fact; for example, it would be no excuse for a recruiting officer charged with enrolling a person who is under age to state that he was unfamiliar with the appropriate regulation, but it would be a defence if he could show that he had reasonable cause to believe that the recruit had in fact attained the age prescribed in regulations.

(M)

103.03—CIVIL DEFENCES AVAILABLE TO ACCUSED

(1) *The National Defence Act* provides:

“125. All rules and principles from time to time followed in the civil courts in proceedings under the *Criminal Code* that would render any circumstances a justification or excuse for any act or omission or a defence to any charge, shall be applicable to any defence to a charge under the Code of Service Discipline, except in so far as such rules and principles are altered by or are inconsistent with this Act.”

(2) The condonation of an act or omission on any ground whatsoever, whether by superior authority or otherwise, shall not be a justification, excuse or defence for the act or omission.

(M)

NOTES

(A) The grounds of justification, excuse or defence most likely to be relied on under this section are: drunkenness, compulsion, self-defence, defence of property and use of force to prevent the commission of an offence. The defence of insanity is dealt with in section 126.

DRUNKENNESS

- (B) The general rule is that a person is responsible for the natural consequences of his acts. Drunkenness is no defence unless, in cases where an intent forms part of the offence, it can be shown that the accused was so drunk at the time of the commission of the offence that he was incapable of forming the necessary intent. Evidence of drunkenness tending to establish that the accused was incapable of forming that intent should be taken into consideration with the other facts proved in order to determine whether or not he actually had that intent.
- (C) Evidence of drunkenness which does not prove that the accused was incapable of forming a necessary intent, and which merely establishes that his mind was so affected by drink that he more readily gave way to some violent passion, does not rebut the presumption that he intended the natural consequences of his acts. Such evidence, however, may be considered in mitigation of punishment.

COMPULSION

- (D) A person charged with having committed an offence may raise compulsion as justification, excuse or defence if all of the following conditions were present:
- (i) He received threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence.
 - (ii) He believed that such threats would be executed.
 - (iii) He was not a party to any association or conspiracy which rendered him subject to compulsion in the commission of the offence.
- (E) Compulsion may not be raised as justification, excuse or defence in respect of offences of treason, murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forceable abduction, robbery, causing grievous bodily harm and arson.
- (F) A person who has been under compulsion to take an unlawful oath to commit an offence or to take a seditious oath is not excused unless subsequently he makes a declaration under section 132 of the *Criminal Code* disclosing the improper oath which he was compelled to take.

SELF-DEFENCE

- (G) Where a person charged with the commission of an offence desires to raise the justification, excuse or defence of self-defence, his plea will be determined upon the principles prescribed in sections 53, 54 and 55 of the *Criminal Code*.

103.03—CIVIL DEFENCES AVAILABLE TO ACCUSED—(Cont'd)*DEFENCE OF PROPERTY*

- (H) Where a person charged with the commission of an offence desires to raise justification, excuse or defence on the ground of defence of property, his plea will be determined upon the principles prescribed in sections 56 to 62 of the *Criminal Code*.

USE OF FORCE

- (I) A person who has been charged with an offence involving the use of force by him may find justification, excuse or defence in accordance with the principles laid down in section 52 of the *Criminal Code*. That section provides that everyone is justified in using such force as may be reasonably necessary in order to prevent the commission of an offence for which, if committed, the offender might under the Criminal Code be arrested without a warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of anyone.

(M)

103.04—INSANITY AS A DEFENCE

The National Defence Act provides:

"126. (1) No person shall be convicted of a service offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong.

(2) In respect of a person labouring under specific delusions, but in other respects sane, subsection one shall not apply unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

(3) Every person shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved."

(M)

NOTES

- (A) In order to establish the defence of insanity, it is necessary to show *either* an incapacity to appreciate the nature and quality of the act or omission, *or* want of knowledge that the act or omission was wrong. The word "and" where it last appears in section 126(1) is intended to be read as "or" and the accused is entitled to the benefit of the defence of insanity on either ground.
- (B) The words "nature and quality" refer solely to the physical character of the act or omission and do not in themselves distinguish between the physical and moral aspects, the latter being the basis of the second of the alternative defences.
- (C) As to whether the accused knew that the act or omission was wrong, the test to be applied is the ordinary standard of right and wrong adopted by reasonable men.
- (D) In order that insanity may be relied upon as a defence, it must be shown to have existed at the time of the commission of the offence, but need not be of a permanent nature.

103.04—INSANITY AS A DEFENCE—(Cont'd)

- (E) If the accused person sets up a defence of insanity, the burden is on him to establish it. It is not sufficient that he should merely raise a doubt as to his sanity but, on the contrary, he must prove to the satisfaction of the service tribunal that he was insane, although he need not prove his insanity beyond a reasonable doubt.

(M)

Section 2—Service Offences**103.05—INTRODUCTION**

(1) When it is desired to refer to an enactment that creates a particular offence, the number of the relevant section of *The National Defence Act* should be cited and not the number of the article in KRCN in which that section is quoted.

(2) When it is required in proceedings under the Code of Service Discipline that offences be stated, the forms of statement of offence, contained in paragraph (2) of the articles next following, should be used as appropriate.

(M)

103.06—OFFENCES BY COMMANDERS WHEN IN ACTION

(1) *The National Defence Act* provides:

“64. Every officer in command of a vessel, aircraft, defence establishment, unit or other element of the Canadian Forces who

- (a) when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, does not use his utmost exertion to bring the officers and men under his command or his vessel, aircraft, or his other materiel into action;
- (b) being in action, does not, during the action, in his own person and according to his rank, encourage his officers and men to fight courageously;
- (c) when capable of making a successful defence, surrenders his vessel, aircraft, defence establishment, materiel, unit or other element of the Canadian Forces to the enemy;
- (d) being in action, improperly withdraws from the action;
- (e) improperly fails to pursue an enemy or to consolidate a position gained;
- (f) improperly fails to relieve or assist a known friend to the utmost of his power; or
- (g) when in action, improperly forsakes his station,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, if he acted from cowardice is liable to suffer death or less punishment, and in any other case is liable to dismissal with disgrace from His Majesty's service or to less punishment.”

103.06—OFFENCES BY COMMANDERS WHEN IN ACTION—(Cont'd)

(2) The statement of the offence in a charge under section 64 should be in one of the following forms:

(a)

{	Traitor-ously, while in command of	{	a vessel an aircraft a defence establish- ment a unit (other element)	{	of the Canadian Forces,	{	when under orders to carry out an opera- tion of war, on coming into con- tact with an enemy that it was his duty to engage,	{	did not use his utmost exertion to bring	{	the officers and men under his command his vessel his air- craft (other materiel)	{	into action
{	From cowar- dice, while in command of												
{	While in command of												

(b)

{	Traitor-ously, while in command of	{	a vessel an aircraft a defence establish- ment a unit (other element)	{	of the Canadian Forces, being in action, did not during the action, in his own person and according to his rank, encourage his officers and men to fight courageously.
{	From cowar- dice, while in command of				
{	While in command of				

103.06—OFFENCES BY COMMANDERS WHEN IN ACTION—(Cont'd)

(c)

{ Traitor- ously, while in command of	{ a vessel an aircraft a defence establish- ment a unit (other element)	of the Canadian Forces, when capable of making a successful defence, surrendered his	{ vessel aircraft defence estab- lishment materiel unit (other element)	} to the enemy
{ From cowar- dice, while in command of				
{ While in command of				

(d)

{ Traitor- ously, while in command of	{ a vessel an aircraft a defence establish- ment a unit (other element)	of the Canadian Forces, being in action, improperly withdrew from the action
{ From cowar- dice, while in command of		
{ While in command of		

103.06—OFFENCES BY COMMANDERS WHEN IN ACTION—(Cont'd)

(e)

{ Traitor- ously, while in command of From coward- ice, while in command of While in command of }	{ a vessel an aircraft a defence establish- ment a unit (<i>other</i> <i>element</i>) }	of the Canadian Forces, improp- erly failed to	{ pursue an enemy consolidate a position gained }

(f)

{ Traitor- ously, while in command of From coward- ice, while in command of While in command of }	{ a vessel an aircraft a defence establish- ment a unit (<i>other</i> <i>element</i>) }	Of the Canadian Forces, improp- erly failed to	{ relieve assist }	a known friend to the utmost of his power

103.06—OFFENCES BY COMMANDERS WHEN IN ACTION—(Cont'd)

(g)

Traitor- ously, while in command of	{ a vessel an aircraft a defence establish- ment a unit (other element)	of the Canadian Forces, when in action, improp- erly forsook his station
From coward- ice, while in command of		
While in command of		

(M)

NOTES

- (A) A charge should not be laid under paragraphs (d), (e), (f) or (g) if the "improper" conduct amounted merely to an error in judgment or incorrect action. The element of dereliction of duty must have been present.
- (B) The word "traitorously" signifies that the person accused has been false in his allegiance to His Majesty.
- (C) The word "cowardice" signifies that the person accused acted in an ignoble manner from fear.
- (D) The particulars of every charge under this section must indicate the identity of the vessel, aircraft, defence establishment, unit or other element of which the accused was in command and, where applicable, the particulars must show circumstances which indicate traitorous or cowardly conduct.

(M)

103.07—OFFENCES BY ANY PERSON IN PRESENCE OF ENEMY(1) *The National Defence Act* provides:

"65. Every person who

- (a) improperly delays or discourages any action against the enemy;
- (b) goes over to the enemy;
- (c) when ordered to carry out an operation of war, fails to use his utmost exertion to carry the orders into effect;
- (d) improperly abandons or delivers up any defence establishment, garrison, place, materiel, post or guard;

103.07—OFFENCES BY ANY PERSON IN PRESENCE OF ENEMY—(Cont'd)

- (e) assists the enemy with materiel;
- (f) improperly casts away or abandons any materiel in the presence of the enemy;
- (g) improperly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of materiel;
- (h) when on watch in the presence or vicinity of the enemy, leaves his post before he is regularly relieved or sleeps or is drunk;
- (i) behaves before the enemy in such manner as to show cowardice; or
- (j) does or omits to do anything with intent to imperil the success of any of His Majesty's Forces or of any forces co-operating therewith,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case, if the offence was committed in action, is liable to suffer death or less punishment or, if the offence was committed otherwise than in action, to imprisonment for life or to less punishment."

(2) The statement of the offence in a charge under section 65 should be in one of the following forms:

(a)

$\left\{ \begin{array}{l} \text{Traitorously,} \\ \text{Improperly,} \\ \text{while in} \\ \text{action,} \\ \text{Improperly} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{delayed} \\ \text{discouraged} \end{array} \right\}$	an action against the enemy
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(b)

$\left\{ \begin{array}{l} \text{Traitorously,} \\ \text{went} \\ \text{While in} \\ \text{action, went} \\ \text{Went} \end{array} \right\}$	over to the enemy
--	-------------------

(c)

$\left\{ \begin{array}{l} \text{Traitorously,} \\ \text{when} \\ \text{While in} \\ \text{action, when} \\ \text{When} \end{array} \right\}$	ordered to carry out an operation of war, failed to use his utmost exertion to carry the orders into effect
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(d)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{Improperly,} \\ \text{while in} \\ \text{action,} \\ \text{Improperly} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{abandoned} \\ \text{delivered up} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{a defence establishment} \\ \text{a garrison} \\ \text{a place} \\ \text{materiel} \\ \text{a post} \\ \text{a guard} \end{array} \right\}$
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103.07—OFFENCES BY ANY PERSON IN PRESENCE OF ENEMY—(Cont'd)

(e)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{assisted} \\ \text{While in} \\ \text{action,} \\ \text{assisted} \\ \text{Assisted} \end{array} \right\}$	$\left. \vphantom{\begin{array}{l} \text{Traitorously} \\ \text{assisted} \\ \text{While in} \\ \text{action,} \\ \text{assisted} \\ \text{Assisted} \end{array}} \right\}$	the enemy with materiel
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(f)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{Improperly,} \\ \text{while in} \\ \text{action,} \\ \text{Improperly} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{cast away} \\ \text{abandoned} \end{array} \right\}$	$\left. \vphantom{\begin{array}{l} \text{cast away} \\ \text{abandoned} \end{array}} \right\}$	materiel in the presence of the enemy
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(g)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{Improperly,} \\ \text{while} \\ \text{in action,} \\ \text{Improperly} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{did something} \\ \text{omitted to do} \\ \text{something} \end{array} \right\}$	$\left. \vphantom{\begin{array}{l} \text{did something} \\ \text{omitted to do} \\ \text{something} \end{array}} \right\}$	resulting in the	$\left\{ \begin{array}{l} \text{capture by the enemy} \\ \text{of persons} \\ \text{capture} \\ \text{destruction} \end{array} \right\}$	$\left. \vphantom{\begin{array}{l} \text{capture by the enemy} \\ \text{of persons} \\ \text{capture} \\ \text{destruction} \end{array}} \right\}$	by the enemy of materiel
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(h)

$\left\{ \begin{array}{l} \text{Traitorously,} \\ \text{when} \\ \text{While in} \\ \text{action,} \\ \text{when} \\ \text{When} \end{array} \right\}$	$\left. \vphantom{\begin{array}{l} \text{Traitorously,} \\ \text{when} \\ \text{While in} \\ \text{action,} \\ \text{when} \\ \text{When} \end{array}} \right\}$	on watch in the	$\left\{ \begin{array}{l} \text{presence} \\ \text{vicinity} \end{array} \right\}$	$\left. \vphantom{\begin{array}{l} \text{presence} \\ \text{vicinity} \end{array}} \right\}$	of the enemy,	$\left\{ \begin{array}{l} \text{left his post} \\ \text{before he was} \\ \text{regularly relieved} \\ \text{slept} \\ \text{was} \\ \text{drunk} \end{array} \right\}$
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(i)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{behaved} \\ \text{While in} \\ \text{action,} \\ \text{behaved} \\ \text{Behaved} \end{array} \right\}$	$\left. \vphantom{\begin{array}{l} \text{Traitorously} \\ \text{behaved} \\ \text{While in} \\ \text{action,} \\ \text{behaved} \\ \text{Behaved} \end{array}} \right\}$	before the enemy in such manner as to show cowardice
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103.07—OFFENCES BY ANY PERSON IN PRESENCE OF ENEMY—(Cont'd)

(j)

(Traitorously)	{ did something omitted to do something }	intending to imperil the success of	{ His Majesty's Forces forces co-operating with His Majesty's Forces }
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While in action	{ did something omitted to do something }	intending to imperil the success of	{ His Majesty's Forces forces co-operating with His Majesty's Forces }
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{ Did something, Omitted to do something }	intending to imperil the success of	{ His Majesty's Forces forces co-operating with His Majesty's Forces }
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(M)

NOTES

- (A) A charge should not be laid under paragraphs (a), (d), (f) or (g) if the "improper" conduct amounted merely to an error in judgment or incorrect action. The element of dereliction of duty must have been present.
- (B) The offence of abandoning or delivering up, prescribed in paragraph (d) can be committed only by the person in charge, whether temporarily or otherwise, of the defence establishment, garrison, place, materiel, post, or guard, and not by a subordinate under his command.
- (C) The word "cowardice" in paragraph (i) signifies that the person accused acted in an ignoble manner from fear.
- (D) The word "traitorously" signifies that the person accused has been false to his allegiance to His Majesty.
- (E) The word "intent" in paragraph (j) merely has the effect of imposing upon the prosecution a duty, more onerous than would otherwise be the case, of proving that the accused did or omitted to do the act in question deliberately. In the case of most offences, however, although the word "intent" does not appear in the section prescribing them, intent is an essential element but it is inferred from the facts and circumstances established. There are some offences, however, in which intent is not an essential element.
- (F) Where applicable the particulars of a charge must show the circumstances which indicate traitorous or cowardly conduct.

(M)

103.08—OFFENCES RELATED TO SECURITY(1) *The National Defence Act* provides:

"66. Every person who

- (a) improperly holds communication with or gives intelligence to the enemy;
- (b) without authority discloses in any manner whatsoever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparations for operations of any of His Majesty's Forces or of any forces co-operating therewith;

103.08—OFFENCES RELATED TO SECURITY—(Cont'd)

- (c) without authority discloses in any manner whatsoever, any information relating to a cryptographic system, aid, process, procedure, publication or document of any of His Majesty's forces or of any forces co-operating therewith;
- (d) makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it;
- (e) gives a parole, watchword, password, countersign or identification signal different from that which he received;
- (f) without authority alters or interferes with any identification or other signal;
- (g) improperly occasions false alarms;
- (h) when acting as sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk;
- (i) forces a safeguard or forces or strikes a sentinel; or
- (j) does or omits to do anything with intent to prejudice the security of any of His Majesty's Forces or of any forces co-operating therewith,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment."

(2) The statement of the offence in a charge under section 66 should be in one of the following forms:

(a)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{Improperly} \end{array} \right\}$	}	$\left\{ \begin{array}{l} \text{held communication with} \\ \text{gave intelligence to} \end{array} \right\}$	}	the enemy
--	---	---	---	-----------

(b)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{Without} \\ \text{authority} \end{array} \right\}$	}	disclosed information relating to	{	the numbers the position materiel movements preparations for movements operations preparations for operations	}	of	{	His Majesty's Forces forces co-operating with His Majesty's Forces	}
---	---	---	---	---	---	----	---	---	---

(c)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{Without} \\ \text{authority} \end{array} \right\}$	}	disclosed information relating to a crypto- graphic	{	system aid process procedure publication document	}	of	{	His Majesty's Forces forces co-operating with His Majesty's Forces	}
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103.08—OFFENCES RELATED TO SECURITY—(Cont'd)

(d)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{made known} \\ \text{Made known} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{the parole} \\ \text{the watchword} \\ \text{the password} \\ \text{the countersign} \\ \text{the identification} \\ \text{signal} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{to a person not entitled} \\ \text{to receive it} \end{array} \right\}$
---	--	---

(e)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{gave} \\ \text{Gave} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{a parole} \\ \text{a watchword} \\ \text{a password} \\ \text{a countersign} \\ \text{an identification} \\ \text{signal} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{different from that} \\ \text{which he received} \end{array} \right\}$
---	---	--

(f)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{Without} \\ \text{authority} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{altered} \\ \text{interfered} \\ \text{with} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{an identification} \\ \text{signal} \\ \text{(other signal)} \end{array} \right\}$
---	--	--

(g)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{Improperly} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{occasioned false alarms} \end{array} \right\}$
--	--

(h)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{when} \\ \text{When} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{acting as} \end{array} \right\}$	$\left\{ \begin{array}{l} \left\{ \begin{array}{l} \text{sentry} \\ \text{lookout} \end{array} \right\} \end{array} \right\}$	$\left\{ \begin{array}{l} \left\{ \begin{array}{l} \text{left his post before he} \\ \text{was regularly relieved} \\ \text{slept} \\ \text{was drunk} \end{array} \right\} \end{array} \right\}$
---	--	---	---

(i)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{forced} \\ \text{Forced} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{a safeguard} \end{array} \right\}$
---	--

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{forced} \\ \text{Traitorously} \\ \text{struck} \\ \text{Forced} \\ \text{Struck} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{a sentinel} \end{array} \right\}$
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103.08—OFFENCES RELATED TO SECURITY—(Cont'd)

(j)

Traitorously	{ did something omitted to do something }	intending to prejudice the security of	{ His Majesty's Forces forces co-operating with His Majesty's Forces }
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{ Did something, Omitted to do something }	intending to prejudice the security of	{ His Majesty's Forces forces co-operating with His Masjety's Forces }
--	--	--

(M)

NOTES

- (A) A charge should not be laid under paragraph (a) or (g) if the "improper" conduct amounted merely to an error in judgment or incorrect action. The element of dereliction of duty must have been present.
- (B) The expression "without authority" in paragraphs (b), (c) and (f) signifies that the accused acted or omitted to act with neither the approval of a competent superior nor the sanction of law, practice or custom. If the evidence adduced by the prosecution, taken by itself, tends to show that the accused acted without authority, a service tribunal may convict unless the accused proves that he had authority.
- (C) The word "safeguard" in paragraph (i) relates to a party detailed for the protection of some person or persons, or of a particular village, house or other property. A single sentry posted from such a party is still part of the safeguard, and it is as much an offence to force him by breaking into the property under his special care as to force the whole party. A man posted solely to control traffic is not a "safeguard" within the meaning of this provision.
- (D) The word "traitorously" signifies that the person accused has been false in his allegiance to His Majesty.
- (E) The particulars of a charge must show the circumstances which indicate traitorous conduct.

(M)

103.09—OFFENCES RELATED TO PRISONERS OF WAR(1) *The National Defence Act* provides:

"67. Every person who

- (a) by want of due precaution, or through disobedience of orders or wilful neglect of duty, is made a prisoner of war;
- (b) having been made a prisoner of war, fails to rejoin His Majesty's service when able to do so; or
- (c) having been made a prisoner of war, serves with or aids the enemy,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment."

103.09—OFFENCES RELATED TO PRISONERS OF WAR—(Cont'd)

(2) The statement of the offence in a charge under section 67 should be in one of the following forms:

(a)

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{by} \\ \text{By} \end{array} \right\}$	}	want of due precaution, was made a prisoner of war
---	---	---

$\left\{ \begin{array}{l} \text{Traitorously} \\ \text{through} \\ \text{Through} \end{array} \right\}$	}	$\left\{ \begin{array}{l} \text{disobedience of orders,} \\ \text{wilful neglect of duty,} \end{array} \right\}$	}	was made a prisoner of war
---	---	--	---	-------------------------------

(b)

$\left\{ \begin{array}{l} \text{Traitorously,} \\ \text{having} \\ \text{Having} \end{array} \right\}$	}	been made a prisoner of war, failed to rejoin His Majesty's service when able to do so
--	---	--

(c)

$\left\{ \begin{array}{l} \text{Traitorously,} \\ \text{having} \\ \text{Having} \end{array} \right\}$	}	been made a prisoner of war, $\left\{ \begin{array}{l} \text{served with} \\ \text{aided} \end{array} \right\}$	}	the enemy
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(M)

NOTES

- (A) The word "wilful" in paragraph (a) signifies that the accused knew what he was doing, intended to do what he did, and was not acting under compulsion.
- (B) The expression "neglect of duty" in paragraph (a) refers to failure to perform a duty of which the accused knew or ought to have known.
- (C) The word "traitorously" signifies that the person accused has been false to his allegiance to His Majesty.

(M)

103.10—OFFENCES RELATED TO OPERATIONS

(1) *The National Defence Act* provides:

"68. Every person who

- (a) does violence to any person bringing materiel to any of His Majesty's Forces or to any forces co-operating therewith;
- (b) irregularly detains any materiel being conveyed to any unit or other element of His Majesty's forces or of any forces co-operating therewith;
- (c) irregularly appropriates to the unit or other element of the Canadian Forces with which he is serving any materiel being conveyed to any other unit or element of His Majesty's forces or of any forces co-operating therewith;

103.10—OFFENCES RELATED TO OPERATIONS—(Cont'd)

(d) without orders from his superior officer, improperly destroys or damages any property;

(e) breaks into any house or other place in search of plunder; or

(f) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving,

is guilty of an offence and on conviction, if he committed any such offence on active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to dismissal with disgrace from His Majesty's service or to less punishment."

(2) The statement of the offence in a charge under section 68 should be in one of the following forms:

(a)

$\left\{ \begin{array}{l} \text{When on} \\ \text{active} \\ \text{service,} \\ \text{did} \\ \text{Did} \end{array} \right\}$	violence to a person bringing materiel to	$\left\{ \begin{array}{l} \text{His Majesty's Forces} \\ \text{forces co-operating} \\ \text{with His Majesty's} \\ \text{Forces} \end{array} \right\}$
--	---	---

(b)

$\left\{ \begin{array}{l} \text{When on} \\ \text{active} \\ \text{service,} \\ \text{irregularly} \\ \text{Irregularly} \end{array} \right\}$	detained materiel being conveyed to	$\left\{ \begin{array}{l} \text{a unit} \\ \text{(other} \\ \text{element)} \end{array} \right\}$	of	$\left\{ \begin{array}{l} \text{His Majesty's} \\ \text{Forces} \\ \text{forces co-} \\ \text{operating} \\ \text{with His} \\ \text{Majesty's} \\ \text{Forces} \end{array} \right\}$
--	--	---	----	--

(c)

$\left\{ \begin{array}{l} \text{When on} \\ \text{active} \\ \text{service,} \\ \text{irregularly} \\ \text{Irregularly} \end{array} \right\}$	appropriated to	$\left\{ \begin{array}{l} \text{the unit} \\ \text{(other} \\ \text{element)} \end{array} \right\}$	of the Canadian Forces with which he was serving materiel be- ing conveyed to an- other	$\left\{ \begin{array}{l} \text{unit} \\ \text{(other} \\ \text{element)} \end{array} \right\}$	of
			$\left\{ \begin{array}{l} \text{His Majesty's Forces} \\ \text{forces co-operating} \\ \text{with His Majesty's} \\ \text{Forces} \end{array} \right\}$		

(d)

$\left\{ \begin{array}{l} \text{When on} \\ \text{active} \\ \text{service,} \\ \text{without} \\ \text{Without} \end{array} \right\}$	orders from his superior officer, improperly	$\left\{ \begin{array}{l} \text{destroyed} \\ \text{damaged} \end{array} \right\}$	property
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103.10—OFFENCES RELATED TO OPERATIONS—(Cont'd)

(e)

$\left\{ \begin{array}{l} \text{When on} \\ \text{active} \\ \text{service,} \\ \text{broke} \\ \text{Broke} \end{array} \right\}$	into	$\left\{ \begin{array}{l} \text{a house} \\ \text{(other} \\ \text{place)} \end{array} \right\}$	in search of plunder
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(f)

$\left\{ \begin{array}{l} \text{When on} \\ \text{active} \\ \text{service,} \\ \text{committed} \\ \text{Committed} \end{array} \right\}$	an offence	$\left\{ \begin{array}{l} \text{property} \\ \text{person} \end{array} \right\}$	of	$\left\{ \begin{array}{l} \text{an inhabitant} \\ \text{a resident} \end{array} \right\}$
	against the			

of a country in
 which he $\left\{ \begin{array}{l} \text{is} \\ \text{was} \end{array} \right\}$ serving

(M)

NOTES

- (A) The word "irregularly" in paragraphs (b) and (c) refers to something done or omitted contrary to law, regulations, orders or instructions, or contrary to established practice or custom. The particulars of a charge must show how the act alleged was irregular.
- (B) A charge should not be laid under paragraph (d) if the "improper" conduct alleged amounted merely to an error in judgment or incorrect action. The element of dereliction of duty must have been present.
- (C) The expression "active service" refers to the situation that exists when the Governor in Council exercises its powers under section 32 of *The National Defence Act* to place the forces, or any part thereof or any officer or man thereof, on active service. (See article 101.04—"Judicial Notice".)

(M)

103.11—SPIES FOR THE ENEMY

(1) *The National Defence Act* provides:

"69. Every person who is a spy for the enemy is guilty of an offence and on conviction is liable to suffer death or less punishment."

(2) The statement of the offence in a charge under section 69 should be in the following form:

Was a spy for the enemy

(M)

103.11—SPIES FOR THE ENEMY—(Cont'd)

NOTES

- (A) Conviction for this offence does not depend upon proving that the accused has committed any particular act of spying but merely that he has the status of a spy for the enemy.

(M)

103.12—MUTINY WITH VIOLENCE

- (1) *The National Defence Act* provides:

“70. Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to suffer death or less punishment.”

- (2) The statement of the offence in a charge under section 70 should be in the following form:

Joined in a mutiny accompanied by violence

(M)

NOTES

- (A) The word “mutiny” is defined in section 2(u) of *The National Defence Act (article 1.02)*. Doubts may well arise whether an officer or a man, present when a mutiny occurs, actually joined in it or not. Where any such doubt exists, an alternative charge may be laid under section 72(c) which makes it an offence to be present at a mutiny and not use utmost endeavours to suppress it.

(M)

103.13—MUTINY WITHOUT VIOLENCE

- (1) *The National Defence Act* provides:

“71. Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment and, in the case of a ringleader of the mutiny, to suffer death or less punishment.”

- (2) The statement of the offence in a charge under section 71 should be in the following form:

Joined (as a ringleader) in a mutiny not accompanied by violence

(M)

NOTES

- (A) A “ringleader” is merely a leader and a person may be treated as a ringleader who is a leader in the carrying on of a mutiny. There may, of course, be more ringleaders than one in a particular mutiny.

(M)

(1) *The National Defence Act* provides:

"72. Every person who

- (a) causes or conspires with any other person to cause a mutiny;
- (b) endeavours to persuade any person to join in a mutiny;
- (c) being present, does not use his utmost endeavours to suppress a mutiny; or
- (d) being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof,

is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment."

(2) The statement of the offence in a charge under section 72 should be in one of the following forms:

- (a)

Caused a mutiny

Conspired with another person to cause a mutiny

- (b)

Endeavoured to persuade another person to join in a mutiny

- (c)

Being present, did not use his utmost endeavours to suppress a mutiny

- (d)

Being aware of an {actual } mutiny, did not without delay inform his superior
 }intended{ officer thereof

(M)

NOTES

- (A) It is essential for the existence of a conspiracy that there be at least two persons who agree or combine together to accomplish the purpose in view. To render a conspiracy unlawful, it is essential that the purpose either be an unlawful one or a lawful one to be accomplished by some unlawful means. The word "conspires" in paragraph (a) therefore relates to an agreement between the accused person and at least one other to cause a mutiny.

- (B) An officer or man may be tried under paragraph (a) for conspiring to cause a mutiny although the conspiracy proved abortive and no mutiny took place.

(M)

103.15—ADVOCATING GOVERNMENTAL CHANGE BY FORCE

(1) *The National Defence Act* provides:

"73. Every person who publishes or circulates any writing, printing or document in which is advocated, or who teaches or advocates, the use, without the authority of law, of force as a means of accomplishing any governmental change within Canada is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment."

103.15—ADVOCATING GOVERNMENTAL CHANGE BY FORCE—(Cont'd)

(2) The statement of the offence in a charge under section 73 should be in the following form:

$$\left\{ \begin{array}{l} \text{Published} \\ \text{Circulated} \end{array} \right\} \text{ a } \left\{ \begin{array}{l} \text{writing} \\ \text{printing} \\ \text{document} \end{array} \right\} \text{ in which was advocated } \left\{ \begin{array}{l} \text{the use, without the} \\ \text{authority of law, of} \\ \text{force as a means of} \\ \text{accomplishing a} \\ \text{governmental chan-} \\ \text{ge within Canada} \end{array} \right\}$$

$$\left\{ \begin{array}{l} \text{Taught} \\ \text{Advocated} \end{array} \right\} \text{ the use, without the authority of law, of force as a means of accom-} \\ \text{plishing a governmental change within Canada.}$$

(M)

103.16—DISOBEDIENCE OF LAWFUL COMMAND

(1) *The National Defence Act* provides:

“74. Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.”

(2) The statement of the offence in a charge under section 74 should be in the following form:

Disobeyed a lawful command of a superior officer.

(3) No charge under section 74 shall be valid if the command was given by a person below the rank of petty officer, first class, or the equivalent relative rank.

(M)

NOTES

- (A) The expression “superior officer” is defined in section 2(11) of *The National Defence Act* to mean any officer or man who, in relation to any other officer or man, is by that Act, or by regulations or by custom of the service, authorized to give a lawful command to that other officer or man.
- (B) A service tribunal should be satisfied, before conviction, that the accused knew that the person, with respect to whom the offence prescribed in this section was committed, was a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware that he was his superior officer.
- (C) Where the accused is charged with an offence against a superior officer who is of the same rank, evidence must be adduced to show that the latter is his superior on some other ground, for example, by reason of the appointment which the superior officer holds.
- (D) When the accused is alleged to have disobeyed an order given him by a person below the rank of petty officer, first class, in circumstances requiring the accused to obey the order, the charge should be laid under section 118 (*See article 103.60—“Conduct to the Prejudice of Order and Discipline”*). For example, if a leading seaman has been placed in charge of a working party, disobedience of his orders relating to the work to be undertaken would properly be dealt with, not under section 74, but under section 118.

103.16—DISOBEDIENCE OF LAWFUL COMMAND—(Cont'd)

- (E) To establish an offence under this section, it is necessary to prove actual non-compliance with a command. A person who merely says "I will not do it" is not necessarily disobeying a command though he may be liable under section 118 (*article 103.60—"Conduct to the Prejudice of Good Order and Discipline"*).
- (F) An omission arising from misapprehension or forgetfulness is not an offence under this section, nor is failure to obey a command where obedience would be physically impossible.
- (G) A command, in order to be lawful, must be one relating to military duty. Thus a command given by an officer to a man to perform some domestic office not relating to his military duty is not a command within the meaning of this section.
- (H) To establish an offence under this section, it is not necessary to prove that the command was given personally by the superior officer. It is sufficient to show that it was given on behalf of a superior officer by someone whom the accused might reasonably suppose to have been duly authorized to notify him of the command.
- (I) A civilian cannot give "a lawful command" to members of the service but it may well be the duty of an officer or man to do the act indicated, apart from any order, and if he does not do so, he may be liable under section 118 (*article 103.60—"Conduct to the Prejudice of Good Order and Discipline"*).
- (J) Religious beliefs or other scruples, even though held in good faith, are no excuse for disobedience of orders.
- (K) The command must be a lawful one; for example, an officer or man is justified in refusing to sign a receipt for his pay if he considers it to be incorrect, even if ordered to sign it.
- (M)

103.17—STRIKING OR OFFERING VIOLENCE TO A SUPERIOR OFFICER

- (1) *The National Defence Act* provides:

"75. Every person who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use, or offers violence against a superior officer, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment."

- (2) The statement of the offence in a charge under section 75 should be in one of the following forms:

$\left\{ \begin{array}{l} \text{Struck} \\ \text{Attempted} \\ \text{to strike} \end{array} \right\} \quad \text{a superior officer}$

$\left\{ \begin{array}{l} \text{Drew} \\ \text{Lifted} \\ \text{up} \end{array} \right\} \quad \text{a weapon against a superior officer}$

$\left\{ \begin{array}{l} \text{Used} \\ \text{Attempted} \\ \text{to use} \\ \text{Offered} \end{array} \right\} \quad \text{violence against a superior officer}$

- (3) No charge under section 75 shall be valid if the person alleged to be a superior officer is a person below the rank of petty officer, first class, or the equivalent relative rank.

(M)

103.17—STRIKING OR OFFERING VIOLENCE TO A SUPERIOR OFFICER— (Cont'd)

NOTES

- (A) The expression "superior officer" is defined in section 2 (11) of *The National Defence Act* to mean any officer or man who, in relation to any other officer or man, is by that Act, or by regulations or by custom of the service, authorized to give a lawful command to that other officer or man.
- (B) A service tribunal should be satisfied, before conviction, that the accused knew that the person, with respect to whom an offence prescribed in this section was committed, was a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware that he was his superior officer.
- (C) Where the accused is charged with an offence against a superior officer who is of the same rank, evidence must be adduced to show that the latter is his superior on some other ground, for example, by reason of the appointment which the superior officer holds.
- (D) When the accused is alleged to have struck, drawn a weapon against, etc. a person below the rank of petty officer, first class, the charge should be laid under section 77 or 118 as appropriate (see articles 103.19—"Quarrels and Disturbances" and 103.60—"Conduct to the Prejudice of Good Order and Discipline").
- (E) See section 120 (article 103.62—"Conviction of Related or Less Serious Offence") under which a person charged with any one of the offences prescribed in this section may be found guilty of any other offence prescribed in this section.
- (F) In order to constitute an offence of attempting to strike, or of attempting to use violence, the following elements must be present:
- (i) An intent to commit the offence;
 - (ii) An act towards the commission of the offence. An intent alone is not sufficient if nothing is done to carry it into effect. A distinction must, however, be drawn between an act toward the commission of an offence and an act which is mere preparation. It may be difficult to draw a clear line of distinction, but, in general, preparation consists in devising or arranging the means for the commission of an offence while, on the other hand, an act or omission sufficient to support a charge of attempting must involve a direct step toward the commission of the offence after the preparations have been made. For example, a person, having an intent to strike a superior officer, might go some distance away and pick up a stick. The procurement of the stick would merely be a stage in his preparations and not such an act as to justify a charge of attempting to strike. An example of an act justifying a charge of attempting to strike would be the picking up of a stick in the vicinity of the superior officer concerned in such circumstances as to indicate that the act of picking up was the first of an intended, continuous series of movements which, if continued, would have resulted in an actual offence of striking; and
 - (iii) Non-completion of the offence. If the actual offence is committed, the alleged offender cannot be convicted of attempting to commit that offence. In view of the provisions of section 120 mentioned in Note (E) above, an alternative charge would not be necessary to convict a person of attempting, if he had originally been charged with one of the other offences prescribed in this section.
- (G) The words "offers violence" include any defiant gesture or act which, if completed, would end in violence, but they do not extend to an insulting or impertinent gesture or act from which violence could not result. For example, a man throwing down arms on parade, but in such a direction that they could not strike a superior officer, could not be deemed to have offered violence within the meaning of this section. On the other hand, the throwing of arms at or the pointing of a loaded fire arm at a superior would amount to offering violence. Conduct not amounting to offering violence, but which is insubordinate in nature, would properly be charged under section 118 (article 103.60—"Conduct to the Prejudice of Good Order and Discipline") or might amount to "behaving with contempt" under section 76 (article 103.18—"Insubordinate Behaviour").

103.17—STRIKING OR OFFERING VIOLENCE TO A SUPERIOR OFFICER— (Cont'd)

- (H) If violence is used in self-defence and it is shown that it was necessary, or at the moment the accused had reason to believe that it was necessary for his actual protection from injury and that he used no more violence than was reasonably necessary for that purpose, he is legally justified in using it, and commits no offence.
- (I) Unless it is established that violence is needed for self-defence, provocation is not a ground of acquittal but tends merely to mitigate the punishment. Evidence of provocation, if tendered, must be admitted.
- (M)

103.18—INSUBORDINATE BEHAVIOUR

- (1) *The National Defence Act* provides:

“76. Every person who uses threatening or insulting language to or behaves with contempt toward a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty’s service or to less punishment.”

- (2) The statement of the offence in a charge under section 76 should be in the following form:

$\left. \begin{array}{l} \text{Used threatening language to} \\ \text{Used insulting language to} \\ \text{Behaved with contempt toward} \end{array} \right\}$	a superior officer
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- (3) No charge under section 76 shall be valid if the person alleged to be a superior officer is a person below the rank of petty officer, first class, or the equivalent relative rank.

(M)

NOTES

- (A) The expression “superior officer” is defined in section 2(II) of *The National Defence Act* to mean any officer or man who, in relation to any other officer or man, is by that Act, or by regulations or by custom of the service, authorized to give a lawful command to that other officer or man.
- (B) A service tribunal should be satisfied, before conviction, that the accused knew that the person, with respect to whom an offence prescribed in this section was committed, was a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware that he was his superior officer.
- (C) Where the accused is charged with an offence against a superior officer who is of the same rank, evidence must be adduced to show that the latter is his superior on some other ground, for example, by reason of the appointment which the superior officer holds.
- (D) When the accused is alleged to have used threatening or insulting language to, or behaved with contempt toward a person below the rank of petty officer, first class, the charge should be laid under Section 118 (*See article 103.60—“Conduct to the Prejudice of Good Order and Discipline”*).
- (E) Where a charge is for using threatening or insulting language, the particulars must state the expressions or their substance and the superior officer to whom they were addressed.
- (F) In the case of threatening or insulting words, they must have been expressed to a superior officer and with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they were spoken, insulting or disrespectful.

103.18—INSUBORDINATE BEHAVIOUR—(Cont'd)

- (G) In the case of contemptuous behaviour, the act or omission complained of must have been within the sight of the superior officer in question.
- (H) Insubordinate language or conduct not falling within Notes (G) or (H) may only be charged under section 118 (*article 103.60—"Conduct to the Prejudice of Good Order and Discipline"*).
- (I) Mere abusive or violent language used by or contemptuous behaviour on the part of a drunken person should not be charged under this section. As a general rule, the interests of discipline would be served by laying a charge under section 88 (*article 103.30—"Drunkenness"*) or section 118 (*article 103.60—"Conduct to the Prejudice of Good Order and Discipline"*).

(M)

103.19—QUARRELS AND DISTURBANCES

- (1) *The National Defence Act* provides:

"77. Every person who quarrels or fights with any other person who is subject to the Code of Service Discipline, or who uses provoking speeches or gestures toward a person so subject tending to cause a quarrel or disturbance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

- (2) The statement of the offence in a charge under section 77 should be in one of the following forms:

$\left. \begin{array}{l} \text{Quarrelled} \\ \text{Fought} \end{array} \right\}$	with a person subject to the Code of Service Discipline
Used provoking	$\left. \begin{array}{l} \text{speeches} \\ \text{gestures} \end{array} \right\} \text{ toward a person subject to the Code of } \left. \begin{array}{l} \text{quarrel} \\ \text{Service Discipline, tending to cause a} \\ \text{disturbance} \end{array} \right\}$

(M)

NOTES

- (A) The offences in this section are prescribed so that those in authority will have a suitable means of suppressing quarrels or disturbances in circumstances in which they might have serious consequences. For example, a fight in a ship, in an aircraft, or in a place where explosive substances or valuable and delicate apparatus is situated, might produce extremely serious results. Charges should not be laid indiscriminately under this section for mere isolated squabbles.

(M)

103.20—DISORDERS

- (1) *The National Defence Act* provides:

"78. Every person who

- (a) being concerned in a quarrel, fray or disorder, refuses to obey an officer, though of inferior rank, who orders him into arrest, or strikes or uses or offers violence to any such officer;
- (b) strikes or uses or offers violence to any other person in whose custody he is placed, whether or not such other person is his superior officer and whether or not such other person is subject to the Code of Service Discipline;

103.20—DISORDERS—(Cont'd)

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, station, camp, quarters or ship,
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

(2) The statement of the offence in a charge under section 78 should be in one of the following forms:

(a)

Being concerned in a	$\left\{ \begin{array}{l} \text{quarrel,} \\ \text{fray,} \\ \text{disorder,} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{refused to obey} \\ \text{struck} \\ \text{used violence to} \\ \text{offered violence} \\ \text{to} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{an officer who} \\ \text{ordered him into} \\ \text{arrest} \end{array} \right\}$
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(b)

$\left\{ \begin{array}{l} \text{Struck} \\ \text{Used violence to} \\ \text{Offered violence to} \end{array} \right\}$	a person in whose custody he was placed
--	---

(c) Resisted an escort whose duty it was to $\left\{ \begin{array}{l} \text{apprehend him} \\ \text{have him in} \\ \text{charge} \end{array} \right\}$

(d) Broke out of $\left\{ \begin{array}{l} \text{barracks} \\ \text{station} \\ \text{camp} \\ \text{quarters} \\ \text{ship} \end{array} \right\}$

(M)

NOTES

- (A) The words "offers violence" in paragraphs (a) and (b) include any defiant gesture or act that, if completed, would end in violence but do not extend to an insulting or impertinent gesture or act from which violence could not result.
- (B) A charge might be laid under paragraph (b) of assaulting a civilian policeman if the person committing the assault has lawfully been placed in the custody of the policeman.
- (C) The offence of resisting, prescribed in paragraph (c), may be committed even if the resistance is passive. A man lying down and refusing to move, if physically able to move, "resists". Threats or a threatening attitude which in fact impede his arrest may amount to resisting an escort. The particulars of the charge should specify the nature of the resistance.
- (D) The offence of breaking out under paragraph (d) consists of quitting barracks, etc., at a time when the accused had no right to do so, either because he was on duty or under punishment, or because of some regulation, order or instruction; and it is immaterial whether the offence was accompanied by violence, stratagem, disguise or simply by walking past a sentry. Where the accused has remained absent for some time after breaking out of barracks, he should normally be charged only with desertion or absence without leave. The mode in which the act

103.20—DISORDERS—(Cont'd)

was effected will, however, assist a CO in determining whether to deal with it as an offence under this section, or to treat it as amounting to desertion or absence without leave. The particulars of the charge must show that the absence was without permission, or otherwise unlawful. A charge of breaking out of quarters, etc., may be laid in a case of a person quartered in one part of a barrack who improperly leaves that part for another part where he had no right to be.

(M)

103.21—DESERTION

(1) *The National Defence Act* provides:

“79. (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if he committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment.

(2) A person deserts who

- (a) being on or having been warned for active service or other important service, is absent without authority with the intention of avoiding that service;
- (b) having been warned that his vessel is under sailing orders, is absent without authority, with the intention of missing that vessel;
- (c) absents himself without authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place;
- (d) is absent without authority from his unit or formation or from the place where his duty requires him to be and at any time during such absence forms the intention of not returning to that unit, formation or place; or
- (e) while absent with authority from his unit or formation or the place where his duty requires him to be, with the intention of not returning to that unit, formation or place, does any act, or omits to do anything, the natural and probable consequence of which act or omission is to preclude his return to that unit, formation or place at the time required.

(3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be.”

(2) The statement of the offence in a charge under section 79 should be in one of the following forms:

{	When on active service,	}	{deserted	}
{	When under orders for active service,	}	{attempted to desert}	}

Deserted

Attempted to desert

(M)

103.21—DESERTION—(Cont'd)

NOTES

- (A) It is an essential ingredient of the offence of desertion that the accused have had a wrongful intent. The question as to whether an accused intended not to return, or did any act which showed that he had an intention of not returning, is in each case a question of fact to be decided by the service tribunal upon the evidence submitted in the course of the trial. Prolonged absence which the accused fails to explain may be taken into account by the service tribunal as one of the factors relevant to the issue of whether he intended not to return. Where, however, the absence has lasted for six months or more, section 79(3) of *The National Defence Act* applies. Evidence relating to the following questions may assist the court in determining whether the accused intended to return:
- (i) Did the accused make any remarks indicating that he did not intend to return?
 - (ii) Were the circumstances in which the accused was living during his absence inconsistent with an intention of returning?
 - (iii) Did the accused change his name during his absence?
 - (iv) Was the state of the accused's kit inconsistent with an intention of returning?
- (B) In order to establish an offence of attempting to desert, the following three elements must be proven:
- (i) An intent to commit the offence of desertion.
 - (ii) An act or omission towards the commission of the offence of desertion. An intent to desert is not sufficient alone if nothing is done to carry it into effect. A distinction must, however, be drawn between acts or omissions toward the commission of an offence of desertion and those which are mere preparations. It is not possible to draw a clear line of distinction but, in general, preparation consists in devising or arranging the means for the commission of an offence while an act or omission sufficient to support a charge of attempting to desert must involve a direct movement towards the commission of the offence after the preparations have been made. For example, a person, having an intent to desert, might pack his kit. That fact would merely be a stage in his preparations and not such an act as to justify a charge of attempting to desert. An example of an act justifying a charge of attempting to desert would be the scaling of a fence surrounding the barracks after preparations indicating an intent to desert.
 - (iii) Non-completion of the offence. If the actual offence of desertion is proven to have been committed, the alleged offender cannot be convicted of attempting to commit the offence. In view of section 120 (*article 103.62—“Conviction of Related or Less Serious Offences”*), however, alternative charges of deserting and of attempting to desert should not be laid.
- (C) The offence of desertion is committed even though the accused person may have left his place of duty with the intention of joining another unit. It is not necessary to prove that he intended to leave His Majesty's service.
- (D) The expression “without authority” in this section signifies that the accused was absent with neither the approval of a competent superior nor the sanction of law, practice or custom.
- (E) See section 120 (*article 103.62—“Conviction of Related or Less Serious Offences”*) under which a person charged with desertion may be found guilty of attempting to desert, or of being absent without leave, and a person charged with attempting to desert may be found guilty of being absent without leave.
- (F) The expression “active service” refers to the situation that exists when the Governor in Council exercises its powers under section 32 of *The National Defence Act* to place the forces, or any part thereof or any officer or man thereof, on active service. (*See article 101.04—“Judicial Notice”*).

(M)

103.22—CONNIVANCE AT DESERTION

(1) *The National Defence Act* provides:

“80. Every person who

- (a) being aware of the desertion or intended desertion of a person from any of His Majesty's Forces, does not without reasonable excuse inform his superior officer forthwith; or
- (b) fails to take any steps in his power to cause the apprehension of a person known by him to be a deserter,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

(2) The statement of the offence in a charge under section 80 should be in one of the following forms:

(a)

Being aware of the $\left\{ \begin{array}{l} \text{desertion} \\ \text{intended} \\ \text{desertion} \end{array} \right\}$ of a person from His Majesty's Forces, did not without reasonable excuse inform his superior officer forthwith

(b) Failed to take steps in his power to cause the apprehension of a person known to him to be a deserter.

(M)

NOTES

- (A) The time at which the accused person became aware of the desertion or intended desertion, and, if he gave notice to his superior officer, the time at which he gave notice, are material and should be specified in the particulars of the charge.
- (B) If a charge is laid under paragraph (b), a statement must be made in the particulars of the charge as to the steps which were within the power of the accused person to take in order to cause the deserter to be apprehended.

(M)

103.23—ABSENCE WITHOUT LEAVE

(1) *The National Defence Act* provides:

“81. (1) Every person who absents himself without leave is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

(2) A person absents himself without leave who

- (a) without authority leaves his unit or formation or the place where his duty requires him to be;
- (b) without authority is absent from his unit or formation or the place where his duty requires him to be; or
- (c) having been authorized to be absent from his unit or formation or the place where his duty required him to be, fails to return to that unit, formation or place at the expiration of the period for which his absence was authorized.”

103.23—ABSENCE WITHOUT LEAVE—(Cont'd)

(2) The statement of the offence in a charge under section 81 should be in the following form:

Absented himself without leave.

(M)

NOTES

- (A) An officer or man charged with desertion or attempted desertion may, under section 120 (*article 183.62—“Conviction of Related or Less Serious Offences”*), be found guilty of absence without leave; but if charged only with absence without leave he cannot be convicted of desertion or attempted desertion.
- (B) The particulars should state the date that the absence began and the date that it ended. If significant, for the purpose of proving a day's absence, the hour of departure and return must also be stated in the particulars.
- (C) Involuntary absence due, for example, to illness or arrest by the civil power is not an offence under this section; but inability to return owing to drunkenness is no excuse, although it may be an offence under section 88 (*article 103.30—“Drunkenness”*). Where the absence was originally voluntary and subsequently became involuntary, the length of the absence without leave must be reckoned in such a way as to exclude the period of involuntary absence. Absence originally involuntary may become an offence of absence without leave if the person charged failed to return to duty at the earliest practicable moment.
- (D) In cases where a person on leave has lost his return ticket or has not sufficient funds to purchase a ticket and, in consequence, is unable to rejoin his unit before the expiration of his leave, the delay in rejoining may be dealt with as absence without leave, notwithstanding that the person in question may have reported to local military or police authorities.
- (E) If an officer or man is told that orders as to reporting will be sent to him at home, it is his duty to ask for orders should none reach him within a reasonable time. Otherwise he may be treated as absent without leave after the date that any honest and reasonable person would have recognized that such orders should normally have arrived.
- (F) Where a person is charged with absenting himself from a particular parade, that parade should be specified in the particulars of the charge so that the accused may be able to show, if he can, that he was by order or custom, or for any other reason, unable to attend that parade. The prosecutor must prove that the accused knew or should have known of the time and place appointed by the commanding officer, but the place for the parade need not have been specifically mentioned if it can be proved that it was well understood and known to the accused. Such a charge should seldom be preferred unless orders stating both the time and place of parade can be produced.
- (G) Ignorance of an order of which he ought to be aware, although it may mitigate the punishment, does not excuse the accused; but misapprehension reasonably arising from want of clarity in the order, may be a ground of excuse.
- (H) The expression “without authority” in this section signifies that the accused was absent with neither the approval of a competent superior nor the sanction of law, practice or custom.

(M)

103.24—FALSE STATEMENT IN RESPECT OF LEAVE

(1) *The National Defence Act* provides:

“82. Every person who knowingly makes a false statement in respect of prolongation of leave of absence is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

103.24—FALSE STATEMENT IN RESPECT OF LEAVE—(Cont'd)

(2) The statement of the offence in a charge under section 82 should be in the following form:

Knowingly made a false statement in respect of prolongation of leave of absence.

(M)

NOTES

- (A) This section applies only to a false statement made in order to obtain extension of leave; for example, a false statement to the effect that a close relative is seriously ill and, therefore, additional leave is required. It does not relate to false excuses for over-staying leave.

(M)

103.25—SCANDALOUS CONDUCT BY OFFICERS

(1) *The National Defence Act* provides:

"83. Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service."

(2) The statement of the offence in a charge under section 83 should be in the following form:

Behaved in a scandalous manner unbecoming an officer.

(M)

NOTES

- (A) It is to be noted that this offence relates only to officers and that the service tribunal may only impose one or the other of two alternative punishments on conviction. An alternative charge might be laid under section 118 (*article 103.60—"Conduct to the Prejudice of Good Order and Discipline"*).
- (B) Scandalous conduct may be either military or social; but a charge based upon social misconduct should not be preferred under this section unless it is so grave as to warrant dismissal with disgrace or dismissal from His Majesty's Service. Social misconduct which is not so grave as to reflect discredit upon the service should not be made the subject of a charge, but may well justify reproof or advice by a superior officer.

(M)

103.26—CRUEL OR DISGRACEFUL CONDUCT

(1) *The National Defence Act* provides:

"84. Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment."

(2) The statement of the offence in a charge under section 84 should be in the following form:

Behaved in a $\left. \begin{array}{l} \text{cruel} \\ \text{disgraceful} \end{array} \right\}$ manner

(M)

103.26—CRUEL OR DISGRACEFUL CONDUCT—(Cont'd)

NOTES

- (A) Offences involving indecency or unnatural conduct might be charged under this section but, as a general rule, should be charged under section 119 (*article 103.61—“Offences Triable by Ordinary Law”*); that is to say, the service offence should be the offence prescribed in the *Criminal Code*.

(M)

103.27—TRAITOROUS UTTERANCES

- (1) *The National Defence Act* provides:

“85. Every person who uses traitorous or disloyal words regarding His Majesty is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.”

- (2) The statement of the offence in a charge under section 85 should be in the following form:

Used { traitorous } words regarding His Majesty
 { disloyal }

(M)

NOTES

- (A) The words alleged to have been used may be either spoken, written or printed.
(B) The words used, or their substance, must be set out in the particulars of the charge.

(M)

103.28—ABUSE OF INFERIORS

- (1) *The National Defence Act* provides:

“86. Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

- (2) The statement of the offence in a charge under section 86 should be in the following form:

{ Struck } a person who by reason of { rank } was subordinate to him
{ Ill-treated } { appointment }

(M)

NOTES

- (A) Striking a sentinel may be a more serious offence under Section 66 (*article 103.08—“Offences Related to Security”*).

(M)

103.29—FALSE ACCUSATIONS OR STATEMENTS

(1) *The National Defence Act* provides:

“87. Every person who

- (a) makes a false accusation against an officer or man, knowing such accusation to be false; or
- (b) when seeking redress under section thirty, knowingly makes a false statement affecting the character of an officer or man or knowingly, in respect of the redress so sought, suppresses any material fact,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

(2) The statement of the offence in a charge under section 87 should be in one of the following forms:

(a)

Made a false accusation against $\left\{ \begin{array}{l} \text{an officer,} \\ \text{a man,} \end{array} \right\}$ knowing such accusation to be false

(b)

When seeking redress under section thirty of *the National Defence Act*, knowingly $\left\{ \begin{array}{l} \text{made a false statement affecting} \\ \text{the character of } \left\{ \begin{array}{l} \text{an officer} \\ \text{a man} \end{array} \right\} \\ \text{in respect of the redress so} \\ \text{sought, suppressed a material} \\ \text{fact} \end{array} \right\}$

(M)

NOTES

- (A) A mere untrue statement, not involving an accusation (e.g., a statement as to the age of a person), is not within the meaning of paragraph (a).
- (B) The word “knowingly” in paragraph (b) has the effect of requiring the prosecutor to adduce evidence of knowledge. If the false statement is established, however, the service tribunal may infer knowledge from the circumstances.

(M)

103.30—DRUNKENNESS

(1) *The National Defence Act* provides:

“88. Drunkenness, whether on duty or not on duty, is an offence and every person convicted thereof is liable to imprisonment for less than two years or to less punishment, except that, where the offence is committed by a man who is neither on active service nor on duty, no punishment of imprisonment, and no punishment of detention for a term in excess of ninety days, shall be imposed.”

103.30—DRUNKENNESS—(Cont'd)

(2) The statement of the offence in a charge under section 88 should be in the following form:

Drunkenness

Drunkenness on duty

Drunkenness on active service

(M)

NOTES

- (A) The fact that the accused person was on duty at the time aggravates the offence of drunkenness; but, in general, when a person is unexpectedly called on to perform some duty for which he has not been warned and is found to be unfit for duty by reason of excessive indulgence in an alcoholic beverage, he should be dealt with as for drunkenness not on duty.
- (B) It is not necessary for the prosecutor to prove that the accused, through liquor, was in any extreme condition nor is the accused entitled to an acquittal by showing that on the occasion in question he could, or actually did, do some duty without manifest failure. In short, if the service tribunal, upon considering all of the evidence, comes to the conclusion that he was through the intoxicating effect of liquor unfit to be entrusted with his duty he may be found guilty on a charge under this section.
- (C) In a case of this nature, should there be any doubt as to the reason for the accused's condition, it is desirable that the opinion of a medical officer be obtained at once in order that he may be able to testify as to whether the condition of the accused is attributable to illness or to the consumption of liquor. Any such evidence should not be based upon the administration of a test as to drunkenness but merely upon the medical officer's opinion concerning the physical condition of the accused.
- (D) Any witnesses testifying that an accused person was drunk must state the reasons for their opinion.
- (E) Intoxication produced by the use of opium or a similar drug should not be charged under this section but under section 118 (*article 103.60—"Conduct to the Prejudice of Good Order and Discipline"*).

(M)

103.31—MALINGERING OR MAIMING

(1) *The National Defence Act* provides:

"89. Every person who

- (a) malingers or feigns or produces disease or infirmity;
- (b) aggravates, or delays the cure of, disease or infirmity by misconduct or wilful disobedience of orders; or
- (c) wilfully maims or injures himself or any other person who is a member of any of His Majesty's Forces or of any forces co-operating therewith, whether at the instance of that person or not, with intent thereby to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service,

103.31—MALINGERING OR MAIMING—(Cont'd)

is guilty of an offence and on conviction, if he commits the offence on active service or when under orders for active service, or in respect of a person on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case, is liable to imprisonment for a term not exceeding five years or to less punishment."

(2) The statement of the offence in a charge under section 89 should be in one of the following forms:

(a)

$\left\{ \begin{array}{l} \text{When on active service,} \\ \text{When under orders for} \\ \text{active service,} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{malingered} \\ \\ \text{produced} \\ \text{feigned} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{disease} \\ \text{infirmity} \end{array} \right\}$

Malingered

$\left\{ \begin{array}{l} \text{Feigned} \\ \text{Produced} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{disease} \\ \text{infirmity} \end{array} \right\}$
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$\left\{ \begin{array}{l} \text{In respect of a person} \\ \text{on active service,} \\ \text{In respect of a person} \\ \text{under orders for} \\ \text{active service,} \end{array} \right\}$	produced	$\left\{ \begin{array}{l} \text{disease} \\ \text{infirmity} \end{array} \right\}$

(b)

$\left\{ \begin{array}{l} \text{When on active service,} \\ \text{When under orders for} \\ \text{active service,} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{aggravated} \\ \text{delayed the} \\ \text{cure of} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{disease} \\ \text{infirmity} \end{array} \right\}$	by	$\left\{ \begin{array}{l} \text{misconduct} \\ \text{wilful dis-} \\ \text{obedience} \\ \text{of orders} \end{array} \right\}$

$\left\{ \begin{array}{l} \text{Aggravated} \\ \text{Delayed the} \\ \text{cure of} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{disease} \\ \text{infirmity} \end{array} \right\}$	by	$\left\{ \begin{array}{l} \text{misconduct} \\ \text{wilful disobedience} \\ \text{of orders} \end{array} \right\}$
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$\left\{ \begin{array}{l} \text{In respect of a} \\ \text{person on} \\ \text{active service,} \\ \text{In respect of a} \\ \text{person under} \\ \text{orders for} \\ \text{active service} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{aggravated} \\ \text{delayed the} \\ \text{cure of} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{disease} \\ \text{infirmity} \end{array} \right\}$	by	$\left\{ \begin{array}{l} \text{misconduct} \\ \text{wilful disobedience} \\ \text{of orders} \end{array} \right\}$

(c)

$\left\{ \begin{array}{l} \text{When on active service,} \\ \text{wilfully} \\ \text{When under orders for} \\ \text{active service, wilfully} \\ \text{Wilfully} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{maimed} \\ \text{injured} \end{array} \right\}$	$\text{himself, with intent thereby to}$ $\text{render himself unfit for service}$

103.31—MALINGERING OR MAIMING—(Cont'd)

$\left\{ \begin{array}{l} \text{When on active service,} \\ \text{wilfully} \\ \text{When under orders for} \\ \text{active service, wilfully} \\ \text{Wilfully} \end{array} \right\}$	caused himself to be	$\left\{ \begin{array}{l} \text{maimed} \\ \text{injured} \end{array} \right\}$	by another person, with intent thereby to render himself un- fit for service
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$\left\{ \begin{array}{l} \text{When on active} \\ \text{service, wilfully} \\ \text{When under} \\ \text{orders for} \\ \text{active service,} \\ \text{wilfully} \\ \text{Wilfully} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{maimed} \\ \text{injured} \end{array} \right\}$	another person who was a mem- ber of	$\left\{ \begin{array}{l} \text{His Majesty's} \\ \text{Forces,} \\ \text{forces} \\ \text{co-operating} \\ \text{with His} \\ \text{Majesty's} \\ \text{Forces} \end{array} \right\}$	with intent to render that other person unfit for service
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$\text{Wilfully} \left\{ \begin{array}{l} \text{maimed} \\ \text{injured} \end{array} \right\}$	another per- son who was	$\left\{ \begin{array}{l} \text{on active} \\ \text{service} \\ \text{under} \\ \text{orders} \\ \text{for} \\ \text{active} \\ \text{service} \end{array} \right\}$	and who was a mem- ber of	$\left\{ \begin{array}{l} \text{His Majesty's} \\ \text{Forces,} \\ \text{forces} \\ \text{co-operating} \\ \text{with His} \\ \text{Majesty's} \\ \text{Forces} \end{array} \right\}$	with intent thereby to render that other person unfit for service
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(M)

NOTES

- (A) A charge of malingering should be laid only where the accused has pretended illness or infirmity in order to escape duty.
- (B) A charge of feigning disease or infirmity should be laid only where the accused exhibits appearances resembling genuine symptoms which, to his knowledge, are not due to such disease or infirmity, but have been induced artificially for purposes of deceit, for example, simulating fits or mental disease.
- (C) The words "wilful" in paragraph (b) and "wilfully" in paragraph (c) signify that the alleged offender knew what he was doing, intended to do what he did and was not acting under compulsion.
- (D) The particulars of a charge under this section should show in what way an accused person has malingered or what disease or infirmity he has feigned or produced, or what particular injury has been inflicted, or of what misconduct or wilful disobedience he has been guilty.
- (E) The word "injures" relates to a temporary condition whereas the word "maims" relates to a permanent impairment.
- (F) The expression "active service" refers to the situation that exists when the Governor in Council exercises its powers under section 32 of *The National Defence Act* to place the forces, or any part thereof or any officer or man thereof, on active service. (See article 101.04—"Judicial Notice".)

(M)

103.32—ILL-TREATMENT OF PERSON IN CUSTODY

(1) *The National Defence Act* provides:

“90. Every person who unnecessarily detains any other person in arrest or confinement without bringing him to trial, or fails to bring that other person’s case before the proper authority for investigation, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

(2) The statement of the offence in a charge under section 90 should be in one of the following forms:

Unnecessarily detained another person in $\left. \begin{array}{l} \text{arrest} \\ \text{confinement} \end{array} \right\}$ without bringing him to trial

Failed to bring another person’s case before the proper authority for investigation.

(M)

NOTES

(A) The prosecutor must prove the facts which will either show or enable the service tribunal to infer that the accused could have brought the person in arrest or confinement to trial or brought his case before the proper authority for investigation.

(M)

103.33—NEGLIGENT OR WILFUL INTERFERENCE WITH LAWFUL CUSTODY

(1) *The National Defence Act* provides:

“91. Every person who

(a) without authority sets free or authorizes or otherwise facilitates the setting free of any person in custody;

(b) negligently or wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody; or

(c) assists any person in escaping or in attempting to escape from custody,

is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for a term not exceeding seven years or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.”

(2) The statement of the offence in a charge under section 91 should be in one of the following forms:

(a)

$\left. \begin{array}{l} \text{Wilfully, without} \\ \text{authority} \\ \text{Without authority} \end{array} \right\}$ $\left. \begin{array}{l} \text{set free} \\ \text{authorized the} \\ \text{setting free of} \\ \text{facilitated the} \\ \text{setting free of} \end{array} \right\}$ a person in custody

103.33—NEGLIGENT OR WILFUL INTERFERENCE WITH LAWFUL CUSTODY —Cont'd)

(b)

$$\left\{ \begin{array}{l} \text{Negligently} \\ \text{Wilfully} \end{array} \right\} \text{ allowed to escape a person } \left\{ \begin{array}{l} \text{who was committed} \\ \text{to his charge} \\ \text{whom it was his} \\ \text{duty to } \left\{ \begin{array}{l} \text{guard} \\ \text{keep in} \\ \text{custody} \end{array} \right\} \end{array} \right\}$$

(c)

$$\left\{ \begin{array}{l} \text{Wilfully assisted} \\ \text{Assisted} \end{array} \right\} \text{ a person to } \left\{ \begin{array}{l} \text{escape} \\ \text{attempt to} \\ \text{escape} \end{array} \right\} \text{ from custody}$$

(M)

NOTES

- (A) The expression "without authority" in paragraph (a) signifies that the accused did or omitted to do something without the approval of a competent superior or without the sanction of law, practice or custom. If proof is given that the person in custody was set free, the onus is on the accused to show his authority. The service tribunal may use its military knowledge with respect to whether the authority alleged was or was not sufficient.
- (B) The word "negligently" in paragraph (b) signifies that the accused either did something or omitted to do something in a manner which would not have been adopted by a reasonable and prudent man under the circumstances. It involves a breach of a duty to take reasonable care.
- (C) The word "wilfully" signifies that the alleged offender knew what he was doing, intended to do what he did and was not acting under compulsion.
- (D) In order properly to found a charge under paragraph (c) of assisting a person in attempting to escape, it must be proven that the person assisted actually was "attempting". To that end, the following elements must be established:
- (i) The person assisted had an intent to escape.
 - (ii) An act or omission by the person assisted towards the commission of the offence of escaping. An intent alone is not sufficient if nothing is done to carry it into effect. A distinction must, however, be drawn between acts or omissions toward the commission of the offence and those which are mere preparation. It is not possible to draw a clear line of distinction but, in general, preparation consists of devising or arranging the means for the commission of an offence while, on the other hand, an act or omission sufficient to support a charge of attempting must involve a direct movement towards the commission of the offence after the preparations have been made. For example, a person having an intent to escape might arrange a hiding place in advance. That arrangement would merely be a stage in his preparations and not such an act as to justify a charge of attempting. An example of an act justifying a charge of attempting to escape would be found where he tried to elude his escort.
 - (iii) Non-completion of the offence of escaping. If the person assisted actually escaped, the person alleged to have assisted him cannot be convicted of assisting in an attempt to escape. If, before a charge of assisting is proceeded with, there is any doubt as to whether or not the person assisted actually escaped, it is advisable to lay alternative charges under paragraph (c), namely, of assisting a person to escape or, in the alternative, of assisting a person in attempting to escape.

(M)

103.34—ESCAPE FROM CUSTODY

(1) *The National Defence Act* provides:

“92. Every person who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes, or attempts to escape, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

(2) The statement of the offence in a charge under section 92 should be in the following form:

Being in	{	arrest,	{	{	escaped
		confinement,			
		prison,			
		lawful custody			
					attempted to escape

(M)

NOTES

- (A) An accused may be convicted under this section for escaping from any lawful custody, for example, from a civilian who under section 202 has arrested him as a deserter.
- (B) An escape may be either with or without force or artifice and either with or without the consent of the custodian.
- (C) A person who escapes from custody and thus absents himself without leave may legally be charged and convicted of both offences; but, as a rule, it is preferable to charge only the absence without leave, alleging in the particulars, for purposes of increasing the gravity of the offence, that it was committed “when in custody”.
- (D) There are three essential elements of an attempt to escape:
- An intent to escape.
 - An act or omission towards the commission of the offence. An intent alone is not sufficient if nothing was done to carry it into effect. A distinction, must, however, be drawn between acts or omissions toward the commission of an offence and those which are mere preparation. It is not possible to draw a clear line of distinction but, in general, preparation consists in devising or arranging the means for the commission of an offence while, on the other hand, an act or omission sufficient to support a charge of attempting must involve a direct movement towards the commission of an offence after the preparations have been made. For example, a person having an intent to escape, might arrange a hiding place in advance. That arrangement would merely be a stage in his preparations and not such an act as to justify a charge of attempting. An example of an act justifying a charge of attempting to escape would be found where he tries to elude his escort.
 - Non-completion of the offence. If the actual offence of escaping is committed the alleged offender cannot be convicted of attempting to escape. If, before a charge of attempting is proceeded with, there is any doubt as to whether the complete offence was or was not committed, it is advisable to allege escape and attempting to escape in the alternative, both charges being laid under this section.

(M)

103.35—OBSTRUCTION—SERVICE POLICE DUTIES

(1) *The National Defence Act* provides:

“93. Every person who

- resists or wilfully obstructs an officer or man in the performance of any duty pertaining to the arrest, custody or confinement of a person subject to the Code of Service Discipline; or

103.35—OBSTRUCTION—SERVICE POLICE DUTIES—(Cont'd)

(b) when called upon, refuses or neglects to assist an officer or man in the performance of any such duty,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

(2) The statement of the offence in a charge under section 93 should be in one of the following forms:

(a)

$\left\{ \begin{array}{l} \text{Resisted} \\ \text{Wilfully} \\ \text{obstructed} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{an officer} \\ \text{a man} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{in performing} \\ \text{a duty pertain-} \\ \text{ing to the} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{arrest} \\ \text{custody} \\ \text{confinement} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{of a person subject} \\ \text{to the Code of Ser-} \\ \text{vice Discipline} \end{array} \right\}$

(b)

When called upon,	$\left\{ \begin{array}{l} \text{refused} \\ \text{neglected} \end{array} \right\}$	to	$\left\{ \begin{array}{l} \text{an officer} \\ \text{a man} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{in performing} \\ \text{a duty} \\ \text{pertaining} \\ \text{to the} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{arrest} \\ \text{custody} \\ \text{confinement} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{of a person} \\ \text{subject to} \\ \text{the Code of} \\ \text{Service Discipline} \end{array} \right\}$

(M)

NOTES

(A) The word "wilfully" in paragraph (a) signifies that the alleged offender knew what he was doing, intended to do what he did and was not acting under compulsion.

(M)

103.36—OBSTRUCTION OF CIVIL POWER

(1) *The National Defence Act* provides:

"94. Every person who neglects or refuses to deliver over an officer or man to the civil power, pursuant to a warrant in that behalf, or to assist in the lawful apprehension of an officer or man accused of an offence punishable by a civil court is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

(2) The statement of the offence in a charge under section ninety-four should be in one of the following forms:

$\left\{ \begin{array}{l} \text{Neglected} \\ \text{Refused} \end{array} \right\}$	to deliver over	$\left\{ \begin{array}{l} \text{an officer} \\ \text{a man} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{to the civil power, pursuant to a warrant} \\ \text{in that behalf} \end{array} \right\}$
$\left\{ \begin{array}{l} \text{Neglected} \\ \text{Refused} \end{array} \right\}$	to assist in the lawful apprehension of	$\left\{ \begin{array}{l} \text{an officer} \\ \text{a man} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{accused of an offence punishable} \\ \text{by a civil court} \end{array} \right\}$

(M)

NOTES

(A) Before an officer or man delivers over a person to the civil power, he should require to see the warrant or other authority for the delivery over.

(M)

103.37—LOSING, STRANDING OR HAZARDING VESSELS

(1) *The National Defence Act* provides:

“95. Every person who wilfully or negligently or through other default loses, strands or hazards, or suffers to be lost, stranded or hazarded any of His Majesty’s Canadian Ships or other vessels of the Canadian Forces is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty’s service or to less punishment.”

(2) The statement of the offence in a charge under section ninety-five should be in one of the following forms;

$$\left\{ \begin{array}{l} \text{Wilfully} \\ \text{Negligently} \\ \text{By default} \end{array} \right\} \left\{ \begin{array}{l} \text{lost} \\ \text{stranded} \\ \text{hazarded} \end{array} \right\} \text{ one of } \left\{ \begin{array}{l} \text{His Majesty's Canadian} \\ \text{Ships} \\ \text{the vessels of the} \\ \text{Canadian Forces} \end{array} \right\}$$

$$\left\{ \begin{array}{l} \text{Wilfully} \\ \text{Negligently} \\ \text{By default} \end{array} \right\} \text{ suffered } \left\{ \begin{array}{l} \text{lost} \\ \text{stranded} \\ \text{hazarded} \end{array} \right\} \text{ to be } \left\{ \begin{array}{l} \text{His Majesty's Canadian} \\ \text{Ships} \\ \text{the vessels of the} \\ \text{Canadian Forces} \end{array} \right\}$$

(M)

NOTES

- (A) The word “wilfully” signifies that the alleged offender knew what he was doing, intended to do what he did and was not acting under compulsion.
- (B) The word “negligently” signifies that the accused either did something or omitted to do something in a manner which would not have been adopted by a reasonable and prudent man under the circumstances. It involves a breach of a duty to take reasonable care.
- (C) The word “hazards” means to endanger or put to the risk of loss or harm.

(M)

103.38—OFFENCES IN RELATION TO CONVOYS

(1) *The National Defence Act* provides:

“96. Every officer who, while serving in one of His Majesty’s Canadian Ships involved in the conveying and protection of a vessel,

(a) fails to defend a vessel or goods under convoy;

(b) refuses to fight in the defence of a vessel in his convoy when it is attacked; or

(c) cowardly abandons or exposes a vessel in his convoy to hazards, is guilty of an offence and on conviction is liable to suffer death or less punishment.”

(2) The statement of the offence in a charge under section ninety-six should be in one of the following forms:

(a)

While serving in one of His Majesty’s Canadian Ships involved in the conveying and protection of a vessel, failed to defend $\left\{ \begin{array}{l} \text{a vessel} \\ \text{goods} \end{array} \right\}$ under convoy

103.38—OFFENCES IN RELATION TO CONVOYS—(Cont'd)

(b)

While serving in one of His Majesty's Canadian Ships involved in the conveying and protection of a vessel, refused to fight in the defence of a vessel in his convoy when it was attacked

(c)

While serving in one of His Majesty's Canadian Ships involved in the conveying and protection of a vessel, cowardly

{	abandoned	}	a vessel in his convoy to
{	exposed	}	hazards

(M)

NOTES

(A) The word "convoing" relates to the escorting of an individual vessel or fleet of vessels.

(B) The word "cowardly" signifies that the person accused acted in an ignoble manner from fear.

(M)

103.39—WRONGFUL ACTS IN RELATION TO AIRCRAFT OR AIRCRAFT MATERIAL

(1) *The National Defence Act* provides:

"97. Every person who

- (a) in the use of or in relation to any aircraft or aircraft material, wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause loss of life or bodily injury to any person;
- (b) wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission results or is likely to result in damage to or destruction or loss of any of His Majesty's aircraft or aircraft material, or of aircraft or aircraft material of any forces co-operating with His Majesty's Forces; or
- (c) during a state of war wilfully or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any of His Majesty's aircraft, or aircraft of any forces co-operating with His Majesty's Forces,

is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment."

(2) The statement of the offence in a charge under section ninety-seven should be in one of the following forms:

(a)

$\left\{ \begin{array}{l} \text{In the use} \\ \text{of} \\ \text{In relation} \\ \text{to} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{an air-} \\ \text{craft,} \\ \text{air-} \\ \text{craft} \\ \text{mate-} \\ \text{rial,} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{wilfully} \\ \text{negligently} \end{array} \right\}$		$\left\{ \begin{array}{l} \text{regulations} \\ \text{orders} \\ \text{instructions} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{did an act} \\ \text{omitted to} \\ \text{do some-} \\ \text{thing} \end{array} \right\}$
		$\left\{ \begin{array}{l} \text{by neglect of} \\ \text{contrary to} \end{array} \right\}$			

103.39—WRONGFUL ACTS IN RELATION TO AIRCRAFT OR AIRCRAFT MATERIAL—(Cont'd)

which $\left\{ \begin{array}{l} \text{act} \\ \text{omission} \end{array} \right\} \left\{ \begin{array}{l} \text{caused} \\ \text{was} \\ \text{likely} \\ \text{to} \\ \text{cause} \end{array} \right\} \left\{ \begin{array}{l} \text{loss of life} \\ \text{bodily injury} \\ \text{to some} \\ \text{person} \end{array} \right\}$

(b)

$\left\{ \begin{array}{l} \text{Wilfully} \\ \text{Negligently} \end{array} \right\} \left\{ \begin{array}{l} \text{By neglect} \\ \text{of} \\ \text{Contrary to} \end{array} \right\} \left\{ \begin{array}{l} \text{regulations} \\ \text{orders} \\ \text{instructions} \end{array} \right\} \left\{ \begin{array}{l} \text{did an act} \\ \text{omitted} \\ \text{to do} \\ \text{something} \end{array} \right\} \text{which} \left\{ \begin{array}{l} \text{act} \\ \text{omission} \end{array} \right\} \left\{ \begin{array}{l} \text{resulted} \\ \text{was} \\ \text{likely} \\ \text{to result} \end{array} \right\}$

in $\left\{ \begin{array}{l} \text{damage to} \\ \text{destruction} \\ \text{of, loss of} \end{array} \right\} \left\{ \begin{array}{l} \text{His Majesty's aircraft} \\ \text{His Majesty's aircraft} \\ \text{material} \\ \text{aircraft of a force} \\ \text{co-operating with His} \\ \text{Majesty's Forces} \\ \text{aircraft material of a} \\ \text{force co-operating} \\ \text{with His Majesty's} \\ \text{Forces} \end{array} \right\}$

(c)

During a state of war $\left\{ \begin{array}{l} \text{wilfully} \\ \text{negligently} \end{array} \right\} \text{caused the} \left\{ \begin{array}{l} \text{by} \\ \text{under the} \\ \text{authority of} \end{array} \right\} \text{sequestration} \left\{ \begin{array}{l} \text{a neutral} \\ \text{state of} \\ \text{one of} \end{array} \right\}$

$\left\{ \begin{array}{l} \text{His Majesty's aircraft} \\ \text{the aircraft of a} \\ \text{force co-operating} \\ \text{with His Majesty's} \\ \text{Forces} \end{array} \right\}$

During a state of war $\left\{ \begin{array}{l} \text{wilfully} \\ \text{negligently} \end{array} \right\} \text{caused the destruction} \left\{ \begin{array}{l} \text{His Majesty's aircraft} \\ \text{the aircraft of a} \\ \text{force co-operating} \\ \text{with His Majesty's} \\ \text{Forces} \end{array} \right\} \text{in a neutral state of} \left\{ \begin{array}{l} \text{one of} \end{array} \right\}$

(M)

103.39—WRONGFUL ACTS IN RELATION TO AIRCRAFT OR AIRCRAFT MATERIAL—(Cont'd)

NOTES

- (A) The word "wilfully" signifies that the alleged offender knew what he was doing, intended to do what he did and was not acting under compulsion.
- (B) The word "negligently" signifies that the accused either did something or omitted to do something in a manner which would not have been adopted by a reasonable and prudent man under the circumstances. It involves a breach of a duty to take reasonable care.
- (C) The word "sequestration" in paragraph (c) refers to a principle of international law whereby a neutral state may seize aircraft of a belligerent which come within its territorial limits.
- (M)

103.40—INACCURATE CERTIFICATE

- (1) *The National Defence Act* provides:

"98. Every person who signs an inaccurate certificate in relation to an aircraft or aircraft material, unless he proves that he took reasonable steps to ensure that it was accurate, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

- (2) The statement of the offence in a charge under section ninety-eight should be in the following form:

Signed an inaccurate certificate in relation to	{	an aircraft aircraft material	}	without having taken reasonable steps to ensure that it was accurate.
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(M)

103.41—LOW FLYING

- (1) *The National Defence Act* provides:

"99. Every person who flies an aircraft at a height less than the minimum height authorized in the circumstances is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

- (2) The statement of the offence in a charge under section ninety-nine should be in the following form:

Flew an aircraft at a height less than the minimum height authorized in the circumstances.

(M)

NOTE

- (A) The phrase "authorized in the circumstances" refers to service orders under which the minimum altitudes are specified. These orders may emanate from Naval Headquarters, the Senior Officer in Chief Command, or other Senior Officer, or in certain circumstances from a commanding officer or other superior.

(M)

103.42—COMMAND IN AIRCRAFT

(1) *The National Defence Act* provides:

"100. (1) Every person who, when in an aircraft, disobeys any lawful command given by the captain of the aircraft in relation to the flying or handling of the aircraft or affecting the safety of the aircraft, whether or not the captain is subject to the Code of Service Discipline, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

(2) For the purposes of this section

- (a) every person whatever his rank shall when he is in an aircraft be under the command, as respects all matters relating to the flying or handling of the aircraft or affecting the safety of the aircraft, of the captain of the aircraft, whether or not the latter is subject to the Code of Service Discipline; and
- (b) if the aircraft is a glider and is being towed by another aircraft, the captain of the glider shall so long as his glider is being towed be under the command, as respects all matters relating to the flying or handling of the glider or affecting the safety of the glider, of the captain of the towing aircraft, whether or not the latter is subject to the Code of Service Discipline."

(2) The statement of the offence in a charge under section one hundred should be in the following form:

When in an aircraft, disobeyed a lawful
command given by the captain of the {the flying } of the aircraft
aircraft in relation to {the handling }

When in an aircraft, disobeyed a lawful command given by the captain of the aircraft
affecting the safety of the aircraft.

(M)

NOTES

- (A) The captain of an aircraft would be empowered to issue an order to a senior passenger but only where the subject matter of the order has some bearing upon the flying or handling of the aircraft or affecting its safety.
- (B) As to persons in a glider the authority to issue lawful commands would rest with the captain of the glider in respect of matters affecting the flying or handling of the glider or its safety, and the question as to who would have the authority to issue commands to airborne troops in connection with other matters would be determined by the circumstances of the case, that is to say, the identity of the officer designated to be in command of the troops or who is in command of the troops by virtue of his appointment or rank.

(M)

103.43—NEGLIGENT OR FURIOUS DRIVING

(1) *The National Defence Act* provides:

“101. Every person who

- (a) having the charge of a vehicle of the Canadian Forces, by wanton or furious driving or racing or other wilful misconduct or by wilful neglect, does or causes to be done any bodily injury to any person or damage to any property;
- (b) drives a vehicle of the Canadian Forces on a street, road, highway or any other place, whether public or private, recklessly or in a manner that is dangerous to any person or property having regard to all the circumstances of the case; or
- (c) drives a vehicle of the Canadian Forces while intoxicated or under the influence of a narcotic,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.”

(2) The statement of the offence in a charge under section one hundred and one should be in one of the following forms:

(a)

Having the charge of a vehicle of the Canadian Forces, by	{	wanton driving furious driving racing wilful miscon- duct wilful neglect	}	{	did caused	}	{	bodily injury to a person damage to property	}
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(b)

Drove the vehicle of the Canadian Forces	{	recklessly in a manner that is dan- gerous to person or property	}	having regard to all the circumstances of the case
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(c)

Drove a vehicle of the Canadian Forces while	{	intoxicated under the influence of a narcotic	}
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(M)

NOTES

- (A) The word “wilful” signifies that the alleged offender knew what he was doing, intended to do what he did and was not acting under compulsion.
- (B) The word “neglect” refers to failure to perform a duty of which the accused knew or ought to have known.
- (C) In determining whether a person has committed an offence under (a) or (b), it is necessary to take the circumstances into account; for example, it might constitute an offence to exceed five miles an hour on an icy hill.

103.43—NEGLIGENT OR FURIOUS DRIVING—(Cont'd)

- (D) The word "intoxicated" in its context in paragraph (c) is not the same thing as "under the influence of liquor". As a general rule, the word "intoxication" signifies that state during which, if a person were permitted to drive a motor car, he would be a danger to persons or property.
- (E) Charges should not be laid under paragraph (c) for driving a vehicle while under the influence of a narcotic unless the narcotic in question is one of the drugs listed in the Schedule to The Opium and Narcotic Drug Act, 1929, Statutes of Canada, Chap. 49, as amended.

(M)

103.44—UNAUTHORIZED USE

- (1) *The National Defence Act* provides:

"102. Every person who

- (a) uses a vehicle of the Canadian Forces for an unauthorized purpose;
- (b) without authority uses a vehicle of the Canadian Forces for any purpose; or
- (c) uses a vehicle of the Canadian Forces contrary to any regulation, order or instruction,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

- (2) The statement of the offence in a charge under section one hundred and two should be in one of the following forms:

(a)

Used a vehicle of the Canadian Forces for an unauthorized purpose

(b)

Without due authority, used a vehicle of the Canadian Forces

(c)

Used a vehicle of the Canadian Forces contrary to $\left. \begin{array}{l} \text{a regulation} \\ \text{an order} \\ \text{an instruction} \end{array} \right\}$

(M)

NOTES

- (A) The class of offence contemplated by paragraph (a) is the use of a vehicle for some personal purpose even though the driver holds a service operator's permit, whereas paragraph (b) contemplates a case wherein a person without a service operator's permit uses a vehicle for any purpose, whether such purpose in itself is proper or not. In this case, however, it would be possible for an unauthorized driver to put forward an excuse. For example, if a vehicle were parked near a burning building, a member of the service, even though not holding a driver's permit, should obviously take reasonable steps to remove it and would not render himself liable under this section for so doing.
- (B) Paragraph (c) applies to a great range of circumstances not covered by either (a) or (b). For example, a driver who carries a civilian whom he is not authorized to transport, cannot be charged with using a vehicle for an unauthorized purpose if he were on a duty run at the time. In those circumstances, it would be necessary to lay a charge under paragraph (c) and the particulars of that charge should contain a reference to the regulation, order or instruction alleged to have been violated.

(M)

103.45—CAUSING FIRES

(1) *The National Defence Act* provides:

"103. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause fire to occur in any materiel, defence establishment or work for defence is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment."

(2) The statement of the offence in a charge under section one hundred and three should be in the following form:

$\left\{ \begin{array}{l} \text{Wilfully} \\ \text{Negligently} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{did an} \\ \text{act} \\ \text{omitted} \\ \text{to do} \\ \text{some-} \\ \text{thing} \end{array} \right\}$	which	$\left\{ \begin{array}{l} \text{act} \\ \text{omission} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{caused} \\ \text{was} \\ \text{likely} \\ \text{to} \\ \text{cause} \end{array} \right\}$	fire to occur in	$\left\{ \begin{array}{l} \text{materiel} \\ \text{a defence} \\ \text{establishment} \\ \text{a work for} \\ \text{defence} \end{array} \right\}$
$\left\{ \begin{array}{l} \text{By neglect of} \\ \text{Contrary to} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{regulations} \\ \text{orders} \\ \text{instructions} \end{array} \right\}$	which	$\left\{ \begin{array}{l} \text{did an} \\ \text{act} \\ \text{omitted} \\ \text{to do} \\ \text{something} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{act} \\ \text{omission} \end{array} \right\}$	caused was likely to cause	
					fire to occur in	$\left\{ \begin{array}{l} \text{materiel} \\ \text{a defence} \\ \text{establishment} \\ \text{a work for} \\ \text{defence} \end{array} \right\}$

(M)

NOTES

- (A) The word "wilfully" signifies that the offender knew what he was doing, intended to do what he did, and was not acting under compulsion.
- (B) The word "negligently" signifies that the accused either did something or omitted to do something in a manner which would not have been adopted by a reasonable and prudent man under the circumstances. It involves a breach of a duty to take reasonable care.
- (C) The offence prescribed in this section is considerably broader than the civilian offence of "arson".

(M)

103.46—STEALING

(1) *The National Defence Act* provides:

"104. (1) Every person who steals is guilty of an offence and on conviction, if at the time of the commission of the offence he was, by reason of his rank, appointment or employment or as a result of any lawful command, entrusted

103.46—STEALING—(Cont'd)

with the custody, control or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to less punishment, and in any other case is liable to imprisonment for a term not exceeding seven years or to less punishment.

(2) For the purposes of this section,

- (a) stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent
 - (i) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest;
 - (ii) to pledge the same or deposit it as security;
 - (iii) to part with it under a condition as to its return which the person parting with it may be unable to perform; or
 - (iv) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion;
- (b) stealing is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it;
- (c) the taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment;
- (d) it is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting.

(3) Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order that it may be stolen."

(2) The statement of the offence in a charge under section one hundred and four should be in one of the following forms:

$\left\{ \begin{array}{l} \text{Stealing} \\ \text{Stealing when} \\ \text{entrusted, by} \\ \text{reason of} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{his rank,} \\ \text{his appointment,} \\ \text{his employment,} \\ \text{a lawful command,} \end{array} \right\}$	$\left\{ \begin{array}{l} \\ \\ \\ \end{array} \right\} \begin{array}{l} \text{with the custody, control or distribution of} \\ \text{the thing stolen} \end{array}$
---	---	--

(M)

NOTES

(A) On every charge of stealing, three things must be proven by the prosecutor:

- (1) that the article in question is one that is capable of being stolen;
- (2) that it was in fact stolen—that an offence was committed; and
- (3) that it was stolen by the accused.

(B) In order to prove that an article is capable of being stolen, it must be established that some person other than the accused owns it and, though the owner may be a person unknown, an indication must be given in the charge of his identity, at least by describing him in relation to some circumstance.

103.46—STEALING—(Cont'd)

- (C) By virtue of subsection (2), the use of the word "stole" imports all of the elements prescribed in that subsection and it is sufficient to charge that the accused "stole" without alleging a fraudulent taking with intent to deprive the owner of the article in question.
- (D) The property stolen should be described in detail. It is improper to allege that the accused stole certain named things and "other articles".
- (E) To constitute theft, the taking or conversion mentioned in subsection (2) (a) must not only be done with the necessary intent but also must be done fraudulently and without colour of right.
- (F) The word "conversion" means the wrongful appropriation and application of the property of another to one's own use.
- (G) The phrase "colour of right" refers to an honest belief in a state of facts which, if it existed, would furnish a legal justification or excuse for the act. For example, a person who takes possession of property in the belief that it is his own, is not guilty of stealing even though his belief may be mistaken.
- (H) Where a systematic course of petty thefts has been perpetrated over a period, it is not necessary to charge each act as a separate offence. The transaction may be treated as one continuous act of stealing and charged in a single charge in which the total amount involved is set out.
- (M)

103.47—RECEIVING

- (1) *The National Defence Act* provides:

"105. Every person who receives or retains in his possession any property obtained by the commission of any service offence, knowing such property to have been so obtained, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment."

- (2) The statement of the offence in a charge under section one hundred and five should be in the following form:

$\left\{ \begin{array}{l} \text{Received} \\ \text{Retained in} \\ \text{his possession} \end{array} \right\}$	was property obtained by the commission of a service offence, knowing such property to have been so obtained.
--	--

(M)

NOTES

- (A) The offence of receiving in this section is not dependent on a prior offence of stealing only but may be based upon a prior offence of some other nature. For example, where an officer receives a gift for favours extended in the transaction of business relating to His Majesty's Forces, he thereby commits a service offence under section 107 (c), and another officer who receives that gift from him knowing it to have been so obtained, commits an offence under this section.
- (B) Where charges of stealing and receiving are laid in respect of the same transaction, these should be laid in the alternative.
- (C) Where an offence of receiving is founded on an earlier act of stealing by someone, the same person cannot normally be both the thief and the receiver and conviction for both offences with regard to the same transaction would therefore be improper and inconsistent. A person who aids, abets, counsels or procures, though he may under section 63 (*article 103.01—"Responsibility for Offences"*) be convicted of stealing, is not in actual fact the thief and he may therefore be convicted of receiving, if the delivery to him is not merely an act done in the commission of the theft but a separate transaction which takes place only after the completion of the theft.

103.47—RECEIVING—(Cont'd)

- (D) The remarks in (C) above do not apply to the offence of retaining possession. It is impossible for an actual thief to "receive" goods from himself but it is not impossible for him to "retain possession" of goods which he has stolen. Where the evidence is not sufficient to justify a conviction of stealing it may be sufficient to support a conviction of "retaining in possession". In some cases, therefore, it may be appropriate to charge both "stealing" and "retaining in possession". The charges need not be in the alternative.

(M)

103.48—DESTRUCTION, LOSS OR IMPROPER DISPOSAL

- (1) *The National Defence Act* provides:

"106. Every person who

- (a) wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any public property, non-public property or property of any of His Majesty's Forces or of any forces co-operating therewith;
- (b) wilfully destroys, damages or improperly sells any property belonging to another person who is subject to the Code of Service Discipline; or
- (c) sells, pawns or otherwise disposes of any cross, medal, insignia or other decoration granted by or with the approval of His Majesty,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

- (2) The statement of the offence in a charge under section one hundred and six should be in one of the following forms:

(a)

Wilfully	{ destroyed damaged }	{ public property non-public property property of His Majesty's Forces property of forces co-operating with His Majesty's Forces }
{ Lost by neglect Sold improperly Expended wastefully }	{ }	{ public property non-public property property of His Majesty's Forces property of forces co-operating with His Majesty's Forces }

(b)

Wilfully	{ destroyed damaged sold improperly }	property belonging to another person subject to the Code of Service Discipline

103.48—DESTRUCTION, LOSS OR IMPROPER DISPOSAL—(Cont'd)

(c)

$\left\{ \begin{array}{l} \text{Sold} \\ \text{Pawned} \\ \text{Disposed} \\ \text{of} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{a cross} \\ \text{a medal} \\ \text{an insignia} \\ \text{a decora-} \\ \text{tion} \end{array} \right\}$	granted	$\left\{ \begin{array}{l} \text{by} \\ \text{with the} \\ \text{approval} \\ \text{of} \end{array} \right\}$	His Majesty
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(M)

NOTES

- (A) The word "wilfully" in paragraphs (a) and (b) signifies that the alleged offender knew what he was doing, intended to do what he did, and was not acting under compulsion.
- (B) A charge should not be laid under paragraphs (a) or (b) of improperly selling, if the "improper" conduct alleged amounted merely to an error in judgment or incorrect action. The element of dereliction of duty must have been present.

(M)

103.49—MISCELLANEOUS OFFENCES

(1) *The National Defence Act* provides:

"107. Every person who

- (a) connives at the exaction of an exorbitant price for property purchased or rented by a person supplying property or services to the Canadian Forces;
- (b) improperly demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department, the Canadian Forces or the Defence Research Board;
- (c) receives directly or indirectly, whether personally or by or through any member of his family or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration, either in money or otherwise, from any person, for assisting or favouring any person in the transaction of any business relating to any of His Majesty's Forces, or to any forces co-operating therewith or to any mess, institute or canteen operated for the use and benefit of members of such forces;
- (d) demands or accepts compensation, consideration or personal advantage for conveying a vessel entrusted to his care;
- (e) being in command of a vessel or aircraft, takes or receives on board goods or merchandise that he is not authorized to take or receive on board; or
- (f) commits any act of a fraudulent nature not particularly specified in the Code of Service Discipline,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

103.49—MISCELLANEOUS OFFENCES—(Cont'd)

(2) The statement of the offence in a charge under section one hundred and seven should be in one of the following forms:

(a)

$\left\{ \begin{array}{l} \text{Connived at the} \\ \text{exaction of an} \\ \text{exorbitant} \\ \text{price for} \\ \text{property} \end{array} \right\} \left\{ \begin{array}{l} \text{purchased} \\ \text{rented} \end{array} \right\} \text{ by a person } \left\{ \begin{array}{l} \text{property} \\ \text{supplying} \end{array} \right\} \left\{ \begin{array}{l} \text{services} \end{array} \right\} \text{ to the} \\ \text{Canadian Forces}$

(b)

Improperly $\left\{ \begin{array}{l} \text{demands} \\ \text{accepts} \end{array} \right\} \left\{ \begin{array}{l} \text{compensation} \\ \text{consideration} \\ \text{personal} \\ \text{advantage} \end{array} \right\} \text{ in respect of } \left\{ \begin{array}{l} \text{the performance of a military duty} \\ \text{a matter relating to the} \end{array} \right\} \left\{ \begin{array}{l} \text{Department of National Defence} \\ \text{Canadian Forces} \\ \text{Defence Research Board} \end{array} \right\}$

(c)

Received $\left\{ \begin{array}{l} \text{a gift} \\ \text{a loan} \\ \text{a promise} \\ \text{compensation} \\ \text{consideration} \end{array} \right\} \text{ for } \left\{ \begin{array}{l} \text{assisting} \\ \text{favouring} \end{array} \right\} \text{ another person } \left\{ \begin{array}{l} \text{in the transaction of business relating to} \end{array} \right\} \left\{ \begin{array}{l} \text{His Majesty's Forces} \\ \text{forces co-operating with His Majesty's Forces} \\ \text{a mess} \\ \text{an institute} \\ \text{a canteen} \end{array} \right\}$

(d)

$\left\{ \begin{array}{l} \text{Demanded} \\ \text{Accepted} \end{array} \right\} \left\{ \begin{array}{l} \text{compensation} \\ \text{consideration} \\ \text{personal} \\ \text{advantage} \end{array} \right\} \text{ for conveying a vessel entrusted to his care }$

(e)

Being in command of $\left\{ \begin{array}{l} \text{a vessel,} \\ \text{an aircraft,} \end{array} \right\} \left\{ \begin{array}{l} \text{took} \\ \text{received} \end{array} \right\} \text{ on board } \left\{ \begin{array}{l} \text{goods} \\ \text{merchandise} \end{array} \right\} \text{ that he was not authorized to } \left\{ \begin{array}{l} \text{take} \\ \text{receive} \\ \text{on board} \end{array} \right\}$

(f)

An act of a fraudulent nature not particularly specified in the Code of Service Discipline.

(M)

103.49—MISCELLANEOUS OFFENCES—(Cont'd)

NOTES

- (A) An example of an offence under paragraph (a) would be the following. A unit has need of provisions and finds it necessary to make arrangements with a wholesale grocer for its supplies. Clandestinely, an officer of the unit makes arrangements for a farmer to supply the wholesale grocer with certain items at a price higher than the farmer would otherwise have charged. As a result, the wholesale grocer is obliged to make a higher charge to the unit.
- (B) A charge should not be laid under paragraph (b) of doing something improperly if the "improper" conduct alleged amounted merely to an error in judgment or incorrect action. The element of dereliction of duty should have been present.
- (C) The word "fraudulent" in paragraph (f) refers to some deceitful practice or device resorted to with intent to deprive another of his rights, or in some manner to do him an injury.
- (M)

103.50—OFFENCES IN RELATION TO SERVICE TRIBUNALS

- (1) *The National Defence Act* provides:

"108. (1) For the purposes of this section, "service tribunal", in addition to the tribunals mentioned in paragraph (jj) of section two, includes a board of inquiry, a commissioner taking evidence under this Act and an officer taking a summary of evidence in accordance with regulations.

- (2) Every person who

- (a) being duly summoned or ordered to attend as a witness before a service tribunal, makes default in attending;
- (b) refuses to take an oath or make a solemn affirmation lawfully required by a service tribunal to be taken or made;
- (c) refuses to produce any documents in his power or control lawfully required by a service tribunal to be produced by him;
- (d) refuses when a witness to answer any question to which a service tribunal may lawfully require an answer;
- (e) uses insulting or threatening language before or causes any interruption or disturbance in the proceedings of a service tribunal; or
- (f) commits any other contempt of a service tribunal,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment; and where an offence under this section is committed at or in relation to a court martial, that court martial may, under the hand of the president, issue an order that the offender undergo, for a period not exceeding thirty days, a term of imprisonment or detention; and where any such order is issued the offender shall not be liable to any other proceedings under the Code of Service Discipline in respect of the contempt in consequence of which the order is issued."

103.50—OFFENCES IN RELATION TO SERVICE TRIBUNALS—(Cont'd)

(2) The statement of the offence in a charge under section one hundred and eight should be in one of the following forms:

(a)

<div> <div>Having been duly summoned</div> <div>Having been ordered</div> </div>	<div>to attend as a witness before</div>	<div>a court martial, a person presiding at a summary trial, a board of inquiry, a commissioner taking evidence under the National Defence Act, an officer taking a summary of evidence,</div>	<div>made default in attending</div>
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(b)

Refused to	<div>take an oath make a solemn affirmation</div>	<div>lawfully required by</div>	<div>a court martial, a person presiding at a summary trial, a board of inquiry, a commissioner taking evidence under the National Defence Act, an officer taking a summary of evidence,</div>	to be	<div>taken made</div>
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(c)

Refused to pro- duce a document in his	<div>power control</div>	<div>lawfully required by</div>	<div>a court martial, a person presiding at a summary trial, a board of inquiry, a commissioner taking evidence under the National Defence Act, an officer taking a summary of evidence,</div>	to be produced by him
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(d)

Refused when a witness to answer a question which	<div>a court martial, a person presiding at a summary trial, a board of inquiry, a commissioner taking evidence under the National Defence Act, an officer taking a summary of evidence,</div>	<div>lawfully re- quired him to answer</div>
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103.50—OFFENCES IN RELATION TO SERVICE TRIBUNALS—(Cont'd)

(e)

Used	{ insulting threatening }	language before	{ a court martial, a person presiding at a summary trial, a board of inquiry, a commissioner taking evidence under the National Defence Act, an officer taking a summary of evidence, }
Caused	{ an interruption a disturbance }	in the proceedings of	{ a court martial, a person presiding at a summary trial, a board of inquiry, a commissioner taking evidence under the National Defence Act, an officer taking a summary of evidence, }

(f)

Contempt of	{ a court martial, a person presiding at a summary trial, a board of inquiry, a commisssioner taking evidence under the National Defence Act, an officer taking a summary of evidence, }
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(3) An order respecting contempt should be in the following form:

"ORDER RESPECTING CONTEMPT

WHEREAS a court martial for the trial of.....

.....
 (rank) (Christian names in full) (surname) (number)

of which I, the undersigned, was President, was on this day sitting

at..... and.....
 (place)

.....
 (rank) (Christian names in full) (surname) (number)

of..... was
 (ship or establishment)

guilty of contempt of the court martial in that he.....
 (offence)

Now, therefore, I, in pursuance of *The National Defence Act* and regulations made
 AL 10

103.50—OFFENCES IN RELATION TO SERVICE TRIBUNALS—(Cont'd)

thereunder, order that the offender for the said contempt do undergo.....
 (imprisonment or detention)
 for the term of

.....
 (Signature of the President)

Dated this.....day of.....19...."

(M)

(4 May 53)

NOTES

- (A) A civilian not subject to the Code of Service Discipline who commits contempt of a service tribunal can be tried only before a civil court under section 243.
- (B) A service tribunal is formed when the members are assembled, even before they are sworn, and anything which would be contempt after they are sworn would be contempt once they are assembled.
- (C) The interruption or disturbance need not be caused within the precincts of the service tribunal itself, if the circumstances are such as to constitute a contempt of court.
- (D) As a rule a service tribunal should accept an apology sufficient to vindicate its dignity without resorting to extreme measures.
- (E) The summary proceeding for contempt prescribed in this section is not a trial and, as the contempt generally is committed in view of the court martial, an opportunity should be given to the offender to offer any explanation of, or excuse for, his conduct, but no further inquiry will be necessary.

103.50—OFFENCES IN RELATION TO SERVICE TRIBUNALS—(Cont'd)

- (F) Normally summary proceedings for contempt should not be taken under this section against the accused person or a witness but a charge should be laid and he should be dealt with at a separate trial. If, however, summary proceedings against the accused person are considered justified, the punishment inflicted for the contempt must immediately follow the contempt and cannot be an addition to the sentence after conviction, or be ordered to commence at the date of the expiration of the punishment under the sentence. When summary proceedings are taken under this section against the accused person, the court martial should adjourn until the expiration of the punishment inflicted for the contempt, and should record upon the proceedings the facts which have necessitated the order.
- (G) A court martial using the summary procedure prescribed in this section has no power to order an offender to undergo any punishment other than those specified.
- (H) There is no right of appeal from the summary order of a court martial committing a person to imprisonment or detention. The offender would have to rely on other remedies such as application for redress of grievance.
- (I) Even though an officer may not, by reason of his rank, be subject to trial by a disciplinary court martial, this would not excuse him of contempt before such a tribunal and a disciplinary court martial could, by the summary procedure prescribed in this section, commit him to imprisonment for contempt; but the correct procedure for the disciplinary court martial would almost invariably be to refrain from taking summary proceedings and report the incident to the appropriate authority.
- (M)

103.51—FALSE EVIDENCE

- (1) *The National Defence Act* provides:

“109. Every person who, when examined on oath, or solemn affirmation before a service tribunal mentioned in section 108, knowingly gives false evidence, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding seven years or to less punishment.”

- (2) The statement of the offence in a charge under section one hundred and nine should be in the following form:

When examined on	{	oath solemn affir- mation	{	before	{	a court martial, a person presiding at a summary trial, a board of inquiry, a commissioner taking evidence under the National Defence Act, an officer taking a summary of evidence,	{	knowingly gave false evidence
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(M)

NOTES

- (A) Trifling mistakes in evidence should not be made the subject of a charge under this section. The section is applicable to an accused person who gives evidence himself, but a charge against him under this section should not be preferred except in a very flagrant case.

103.51—FALSE EVIDENCE—(Cont'd)

- (B) The proceedings of a court martial before which false evidence is alleged to have been given are admissible as evidence that the accused swore as charged.
- (C) The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter concerned.

(M)

103.52—DISTURBANCES, ETC., IN BILLETS

- (1) *The National Defence Act* provides:

“110. Every person who

- (a) ill-treats, by violence, extortion or making disturbance in billets or otherwise, any occupant of a house in which any person is billeted or of any premises in which accommodation for materiel has been provided; or
- (b) fails to comply with regulations in respect of payment of the just demands of the person on whom he or any officer or man under his command is or has been billeted or the occupant of premises on which materiel is or has been accommodated,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

- (2) The statement of the offence in a charge under section one hundred and ten should be in one of the following forms:

(a)

Ill-treated, by	{	violence,	{	an	{	a house in which a person	}
		extortion,				was billeted	
		making		occupant		premises in which accommo-	
		disturbance	of					dation for materiel
		in billets,				was provided	
		(otherwise)					

(b)

Failed to comply with regulations in respect of pay- ment of the just demands of the person on whom	{	he	{	{	was	}	billeted
		an officer under						had
		his command		been			
		a man under his	command				

Failed to comply with regulations in respect of payment of the just demands of the occupants of premises on which materiel	{	was	}	accommodated
		had been		

(M)

NOTE

- (A) It is to be noted that the offence prescribed in paragraph (a) would in many cases also constitute a civil offence triable in the civil courts.

(M)

103.53—FRAUDULENT ENROLMENT

(1) *The National Defence Act* provides:

“111. Every person who, having been released from His Majesty’s Forces by reason of a sentence of a service tribunal or by reason of misconduct, has afterwards been enrolled in the Canadian Forces without declaring the circumstances of his release is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

(2) The statement of the offence in a charge under section one hundred and eleven should be in the following form:

Having been released from { a sentence of a } did not declare the circumstances of
His Majesty’s Forces by { service tribunal, } his release upon being enrolled
reason of { misconduct, } afterwards in the Canadian Forces

(M)

NOTES

- (A) This section and section 112 are the only sections in which the offence consists in something done or omitted before the alleged offender became subject to the Code of Service Discipline. He must, however, at the time of being charged, dealt with and tried, be subject to that Code.
- (B) Failure to declare the circumstances of release is *prima facie* proved by the attestation papers showing that answers given were inconsistent with the facts.
- (C) A person who can show that when released he was not made acquainted with the fact that his release was for one of the reasons mentioned in this section, should not be convicted under this section.
- (D) A person charged with an offence under this section should not also be charged under section 112 with having made a false answer on the occasion of his enrolment.

(M)

103.54—FALSE ANSWER ON ENROLMENT

(1) *The National Defence Act* provides:

“112. Every person who knowingly makes a false answer to any question set forth in any document required to be completed in relation to his enrolment is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

(2) The statement of the offence in a charge under section one hundred and twelve should be in the following form:

Knowingly made a false answer to a question set forth in a document required to be completed in relation to his enrolment.

(M)

NOTES

- (A) This section and section 111 are the only sections in which the offence consists in something done or omitted before the alleged offender became subject to the Code of Service Discipline. He must, however, at the time of being charged, dealt with and tried, be subject to that Code.

103.54—FALSE ANSWER ON ENROLMENT—(Cont'd)

- (B) The word “knowingly” has the effect of requiring the prosecutor to adduce evidence of knowledge. If the false statement is established, however, the service tribunal may infer knowledge from the circumstances.
- (C) A person should not be charged with a “false answer” under this section and, at the same time, with having committed an offence under section 111 in respect of the same enrolment. Examples of the classes of cases to which this section relates occur where an applicant makes false statements with respect to his age or his educational qualifications.

(M)

103.55—ASSISTING UNLAWFUL ENROLMENT

- (1) *The National Defence Act* provides:

“113. Every person who is concerned in the enrolment of any other person, and knows or has reasonable cause to believe that by being enrolled such other person commits an offence under this Act, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

- (2) The statement of the offence in a charge under section one hundred and thirteen should be in the following form:

Being concerned in the enrolment of another person.	{	knew had reasonable cause to believe	}	that by being enrolled such other person committed an offence under the National Defence Act
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(M)

NOTES

- (A) An example of the class of case to which this section applies is where a recruiting officer participates in the enrolment of a person, known to him to have been released for misconduct, who has not declared the reason for his release upon his attestation paper.

(M)

103.56—NEGLIGENT PERFORMANCE OF DUTIES

- (1) *The National Defence Act* provides:

“114. Every person who negligently performs a military duty imposed on him is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty’s service or to less punishment.”

- (2) The statement of the offence in a charge under section one hundred and fourteen should be in the following form:

Negligently performed a military duty imposed on him

(M)

NOTES

- (A) The word “negligently” signifies that the accused either did something or omitted to do something in a manner which would not have been adopted by a reasonable and prudent man under the circumstances. It involves a breach of a duty to take reasonable care.

103.55—ASSISTING UNLAWFUL ENROLMENT—(Cont'd)

Particulars: In that he, at (place), on (date), enrolled (number, rank and name), knowing that the said (rank and name), had been released for misconduct from (service), and had failed to declare the circumstances of that release.

(M)

(1 Mar 59)

103.56—NEGLIGENT PERFORMANCE OF DUTIES

(1) *The National Defence Act* provides:

“114. Every person who negligently performs a military duty imposed on him is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty’s service or to less punishment.”

(2) The statement of the offence in a charge under section 114 should be in the following form:

Negligently performed a military duty imposed on him.

(M)

NOTES

(A) The word “negligently” signifies that the accused either did something or omitted to do something in a manner which would not have been adopted by a reasonably capable and careful person in his position in the Service under similar circumstances. (1 Mar 59)

(B) This offence is stated in broad general terms but the section should not be invoked in ordinary cases of carelessness but only where the nature of the military duty, or the circumstances in which it is being performed, is such as to impose upon the individual a need to take special care in its performance.

(M)

(28 Oct 64)

SPECIMEN CHARGES

Sec. 114 NEGLIGENTLY PERFORMED A MILITARY DUTY IMPOSED ON HIM

N.D.A. *Particulars:* In that he, at (place), on (date), while acting as range safety officer at (place), failed to ensure, as it was his duty to do, that all persons were clear of the target area before giving the order for firing to commence.

(M)

(1 Mar 59)

103.57—OFFENCES IN RELATION TO DOCUMENTS

(1) *The National Defence Act* provides:

“115. Every person who

- (a) wilfully or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes, or who, being aware of the falsity of a statement or entry in such a document, orders the making or signing thereof;
- (b) when signing a document required for official purposes, leaves blank any material part for which his signature is a voucher; or
- (c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment.”

103.57—OFFENCES IN RELATION TO DOCUMENTS—(Cont'd)

(2) The statement of the offence in a charge under section 115 should be in one of the following forms:

(a)

{ Wilfully } made a { statement } in a { made by him } that was
 { Negligently } false { entry } document { signed by him } required for
 official
 purposes.

(b)

When signing a document required for official purposes, left in blank a material part for which his signature was a voucher.

(c)

With intent to { injure } { suppressed }
 { another, } { defaced }
 { deceive, } { altered } a { document } { kept }
 { } { made away } { file } { made } for a
 { with } { issued }
 { military }
 { departmental } purpose.

(M)

NOTES

- (A) The word "wilfully" signifies that the alleged offender knew what he was doing, intended to do what he did, and was not acting under compulsion.
- (B) In making a statement or an entry in an official document a person has a duty in law to take reasonable steps to ascertain the accuracy of the statement or entry. If a statement or entry is inaccurate, the failure to have taken these steps constitutes "negligence" under this section.
- (C) The word "intent" merely has the effect of imposing upon the prosecution a duty, more onerous than would otherwise be the case, of proving that the accused did or omitted to do the act in question deliberately. In the case of most offences, however, although the word "intent" does not appear in the section prescribing them, intent is an essential element but it is inferred from the facts and circumstances established. There are some offences, however, in which intent is not an essential element.
- (D) The classes of documents contemplated by this section are those which an officer or man submits either as part of his military duty or because he desires to obtain some benefit or advantage permitted by regulations or orders, and the benefit or advantage is obtainable only after completion of prescribed documents. The person should not be charged under this section in respect of documents which he is required to complete in his civilian capacity such as civilian income tax returns, succession duty forms, birth and death registrations, etc.
- (E) A trifling error in a report should not be made the ground of a charge under this section.

(M)

(1 Mar 59)

SPECIMEN CHARGES

Sec. 115(a) WILFULLY MADE A FALSE ENTRY IN A DOCUMENT MADE BY HIM THAT WAS
 N.D.A. REQUIRED FOR OFFICIAL PURPOSES

Particulars: In that he, at (place), on (date), made an entry in the civilian attendance records showing that (name) had reported for work at (time) on (date), knowing that the said (name) had not so reported.

Sec. 115(b) WHEN SIGNING A DOCUMENT REQUIRED FOR OFFICIAL PURPOSES, LEFT IN
 N.D.A. BLANK A MATERIAL PART FOR WHICH HIS SIGNATURE WAS A VOUCHER

Particulars: In that he, at (place), on (date), when completing an acknowledgment of receipt

103.56—NEGLIGENT PERFORMANCE OF DUTIES—(Cont'd)

- (B) This offence is stated in broad general terms but the section should not be invoked in ordinary cases of carelessness but only where the circumstances are such as to impose upon the individual a special duty to take care.

(M)

103.57—OFFENCES IN RELATION TO DOCUMENTS

- (1) *The National Defence Act* provides:

"115. Every person who

- (a) wilfully or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes, or who, being aware of the falsity of a statement or entry in such a document, orders the making or signing thereof;
- (b) when signing a document required for official purposes, leaves in blank any material part for which his signature is a voucher; or
- (c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment."

- (2) The statement of the offence in a charge under section one hundred and fifteen should be in one of the following forms:

(a)

{ Wilfully } made a { statement } in a doc- { made by him } that was re-
 { Negligently } false { entry } ument { signed by him } quired for official
 purposes.

(b)

When signing a document required for official purposes, left in blank a material part for which his signature was a voucher.

(c)

With intent to { injure } { suppressed }
 { another, } { defaced }
 { deceive, } { altered } a { document } { kept }
 { } { made away } { file } { made }
 { } { with } { issued } for a
 { military }
 { departmental } purpose

(M)

103.57—OFFENCES IN RELATION TO DOCUMENTS—(Cont'd)**NOTES**

- (A) The word “knowingly” has the effect of requiring the prosecutor to adduce evidence of knowledge. If the false statement is established, however, the service tribunal may infer knowledge from the circumstances.
- (B) The word “negligently” signifies that the accused either did something or omitted to do something in a manner which would not have been adopted by a reasonable and prudent man under the circumstances. It involves a breach of a duty to take reasonable care.
- (C) The word “intent” merely has the effect of imposing upon the prosecution a duty, more onerous than would otherwise be the case, of proving that the accused did or omitted to do the act in question deliberately. In the case of most offences, however, although the word “intent” does not appear in the section prescribing them, intent is an essential element but it is inferred from the facts and circumstances established. There are some offences, however, in which intent is not an essential element.
- D) The classes of documents contemplated by this section are those which relate to military matters. A person should not be charged under this section in respect of some document, such as an income tax return, which he is required to complete in his civilian capacity.
- (E) A trifling error in a report should not be made the ground of a charge under this section.
- (M)

103.58—REFUSING VACCINATION, ETC.

- (1) *The National Defence Act* provides:

“116. Every person who, upon receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, wilfully and without reasonable excuse disobeys that order is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

- (2) The statement of the offence in a charge under section one hundred and sixteen should be in the following form:

Upon receiving an order to submit to	{ inoculation, re-inoculation, vaccination, re-vaccination, an immunization procedure, an immunity test, a blood examination, treatment against an infectious disease, }	{ wilfully and without reasonable excuse disobeyed that order }
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(M)

103.58—REFUSING VACCINATION, ETC.—(Cont'd)

NOTES

- (A) No authority exists whereby a person can be forced actually to undergo inoculation, etc., although he can be ordered to submit himself to such a procedure. Failure of a person to submit to inoculation, etc., in spite of an order requiring him to do so, would constitute an offence on his part. "Reasonable excuse" is a defence to a charge under this section.
- (B) Persons who refuse to submit to inoculation, etc., who are able to prove sincere conviction on the ground of religious belief or other scruple should not be charged under this section. The main purpose of the section is to ensure that members of the Forces will not evade important service by refusing to submit to inoculation, etc., when failure to be inoculated would mean that they could not be sent on duty to a particular area.
- (C) The word "wilfully" signifies that the alleged offender knew what he was doing, intended to do what he did and was not acting under compulsion.

(M)

103.59—NEGLIGENT HANDLING OF DANGEROUS SUBSTANCES

- (1) *The National Defence Act* provides:

"117. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions does any act or omits to do anything in relation to any thing or substance that may be dangerous to life or property, which act or omission causes or is likely to cause loss of life or bodily injury to any person or causes or is likely to cause damage to or destruction of any property, is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment."

- (2) The statement of the offence in a charge under section one hundred and seventeen should be in the following form:

$\left\{ \begin{array}{l} \text{Wilfully} \\ \text{Negligently} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{did an act} \\ \text{omitted to} \\ \text{do something} \end{array} \right\}$	in relation to a	$\left\{ \begin{array}{l} \text{thing} \\ \text{substance} \end{array} \right\}$	that may be dangerous to	
$\left\{ \begin{array}{l} \text{life} \\ \text{property} \end{array} \right\}$		which	$\left\{ \begin{array}{l} \text{act} \\ \text{omission} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{caused} \\ \text{was likely} \\ \text{to cause} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{loss of life} \\ \text{bodily injury to} \\ \text{some person} \\ \text{damage to property} \\ \text{destruction of} \\ \text{property} \end{array} \right\}$
$\left\{ \begin{array}{l} \text{By neglect of} \\ \text{Contrary to} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{regulations} \\ \text{orders} \\ \text{instructions} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{did an act} \\ \text{omitted to} \\ \text{do some-} \\ \text{thing} \end{array} \right\}$	in relation to a	$\left\{ \begin{array}{l} \text{thing} \\ \text{sub-} \\ \text{stance} \end{array} \right\}$	
that may be dangerous to	$\left\{ \begin{array}{l} \text{life} \\ \text{property} \end{array} \right\}$	which	$\left\{ \begin{array}{l} \text{act} \\ \text{omission} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{caused} \\ \text{was likely} \\ \text{to cause} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{loss of life} \\ \text{bodily injury to} \\ \text{some person} \\ \text{damage to property} \\ \text{destruction of} \\ \text{property} \end{array} \right\}$

(M)

103.59—NEGLIGENT HANDLING OF DANGEROUS SUBSTANCES—(Cont'd)

NOTES

- (A) This section is designed to provide suitably for offences in relation to modern materials of war which inherently are so dangerous that an extreme degree of care in their handling is required. Responsibility is not dependent upon whether the accused intended the actual consequences which his wrong-doing produced.
- (B) The word "wilfully" signifies that the alleged offender knew what he was doing, intended to do what he did and was not acting under compulsion.
- (C) The word "negligently" signifies that the accused either did something or omitted to do something in a manner which would not have been adopted by a reasonable and prudent man under the circumstances. It involves a breach of a duty to take reasonable care.

(M)

103.60—CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

- (1) *The National Defence Act* provides:

"118. (1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every person convicted thereof is liable to dismissal with disgrace from His Majesty's service or to less punishment.

(2) No person may be charged under this section with any offence for which special provision is made in sections sixty-four to one hundred and seventeen but the conviction of a person so charged is not invalid by reason only of the charge being in contravention of this subsection unless it appears that an injustice has been done to the person charged by reason of the contravention; but the responsibility of any officer for that contravention is not affected by the validity of the conviction.

- (3) Contravention by any person of

- (a) any of the provisions of this Act;
- (b) any regulations, orders or instructions published for the general information and guidance of that Service of the Canadian Forces to which that person belongs, or to which he is attached or seconded; or
- (c) any general, garrison, unit, station, standing, local or other orders, is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

(4) An attempt to commit any of the offences prescribed in sections sixty-four to one hundred and seventeen is, unless such attempt is in itself an offence punishable under any of those sections, an act, conduct, disorder or neglect to the prejudice of good order and discipline.

(5) Nothing in subsections three or four shall affect the generality of subsection one."

- (2) The statement of the offence in a charge under section one hundred and eighteen should be in the following form:

$\left\{ \begin{array}{l} \text{An act} \\ \text{Conduct} \\ \text{Disorder} \\ \text{Neglect} \end{array} \right\}$	to the prejudice of good order and discipline
--	---

(M)

103.60—CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE —(Cont'd)

NOTES

- (A) A service tribunal would not be warranted in convicting an accused of this offence unless of the opinion that the conduct, etc. proved was to the prejudice of both good order and discipline, having regard to its nature and to the circumstances in which it took place.
- (B) The word "neglect" refers to a failure to perform a duty of which the accused knew or ought to have known. No element of intent is involved.
- (C) If there is real doubt as to whether one of the other offences prescribed in the Act has been committed and the circumstances would justify a less serious charge under this section, the charge should be laid under this section.
- (D) Where a contravention mentioned in sub-section (3) is the basis of a charge, all that the prosecutor needs to prove is:
 - (i) that the alleged contravention actually occurred, and
 - (ii) in the case of a breach of regulations, orders or instructions under (3)(b) or (c), that the regulation, order or instruction was issued and was published in the manner prescribed by article 1.21 (*Notification by Receipt of Regulations, Orders and Instructions*).

Upon proof by the prosecutor that the regulation, order or instruction was issued and promulgated in the manner so prescribed, the accused is deemed to have knowledge of its contents, and it is no defence for him to say that he was unaware of its existence or was ignorant of its contents.

- (E) In most cases attempts may be charged only under this section but exceptions are to be found in section 75 (*article 103.17—"Striking or Offering Violence to a Superior Officer"*), section 79 (*article 103.21—"Desertion"*), section 92 (*article 103.34—"Escape From Custody"*) and section 119 (*article 103.61—"Offences Punishable by Ordinary Law"*). There are three essential elements of an attempt:
 - (i) An intent to commit the offence.
 - (ii) An act or omission towards the commission of the offence. An intent alone is not sufficient if nothing is done to carry it into effect. A distinction must, however, be drawn between acts or omissions toward the commission of an offence and those which are mere preparation. It is not possible to draw a clear line of distinction but, in general, preparation consists in devising or arranging the means for the commission of an offence while, on the other hand, an act or omission sufficient to support a charge based upon attempting must involve a direct movement towards the commission of an offence after the preparations have been made. For example, a person, having an intent to set fire to a building, might purchase matches for the purpose. The purchase would merely be a state in his preparations and not such an act as to justify a charge based upon attempting. An example of an act justifying a charge based upon attempting would be the application of a lighted match to the building.
 - (iii) Non-completion of the offence. If the actual offence is committed, the alleged offender cannot be convicted of attempting to commit the offence. If, before a charge based upon attempting is proceeded with, there is any doubt as to whether the complete offence was or was not committed, it is advisable to charge the alleged offender in the alternative, for example, with having committed the offence and with having committed an offence, based upon attempting, under this section. In cases involving striking or using violence against a superior officer (*section 75—article 103.17*), and desertion (*section 79—article 103.21*), when there is doubt as to whether the complete offence was committed, an alleged offender should be charged with commission of the complete offence only. In such a case, by virtue of section 120 (*article 103.62—"Conviction of Related or Less Serious Offences"*), it is possible for the accused to be found guilty of attempting if the commission of the complete offence is not established. A further exception is to be found in cases of escaping from custody (*section 92—article 103.34*). Section 120 does not apply to section 92 and, therefore, since 92 contains a specific offence of attempting, it would not be possible to lay an alternative charge of attempting under this section. If it is desired to allege escaping and attempting to escape in the alternative, alternative charges must be laid under section 92 itself.

103.60—CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE —(Cont'd)

(F) The following are a few instances of offences commonly charged under this section:

- Being in improper possession of property belonging to a comrade where there is no evidence of actual theft;
- Producing a medical certificate, knowing it not to be genuine;
- Improperly wearing a uniform, rank badges, ribbons or medals to which the accused person was not entitled;
- Giving a false name to the Service Police;
- Being unfit for duty by reason of previous indulgence in alcoholic stimulants.

(G) When an accused is charged under Section 118, the service tribunal may apply its general military knowledge (*see article 101.04—"Judicial Notice"*) as to what good order and discipline require under the circumstances, and so come to a conclusion whether the conduct, disorder, or neglect complained of was to the prejudice of both good order and discipline.

(M)

103.61—OFFENCES PUNISHABLE BY ORDINARY LAW

(1) *The National Defence Act* provides:

"119. (1) An act or omission

- (a) that takes place in Canada and is punishable under Part XII of this Act, the *Criminal Code* or any other Act of the Parliament of Canada; or
- (b) that takes place out of Canada and would, if it had taken place in Canada, be punishable under Part XII of this Act, the *Criminal Code* or any other Act of the Parliament of Canada,

is an offence under this Part and every person convicted thereof is liable to suffer punishment as provided in subsection ~~one~~ ⁽²⁾ **AL 14**

(2) Subject to subsection three, where a service tribunal convicts a person under subsection one, the service tribunal shall,

- (a) if under Part XII of this Act, the *Criminal Code* or other Act of the Parliament of Canada, a minimum penalty is prescribed, impose a penalty in accordance with the enactment prescribing that minimum penalty; or
- (b) in any other case,
 - (i) impose the penalty prescribed for the offence by Part XII of this Act, the *Criminal Code* or that other Act; or
 - (ii) impose dismissal with disgrace from His Majesty's service or less punishment.

(3) All provisions of the Code of Service Discipline in respect of a punishment of death, imprisonment for two years or more, imprisonment for less than two years, and a fine, shall apply in respect of penalties imposed under paragraph (a), or sub-paragraph (i) of paragraph (b) of subsection two.

(4) Nothing in this section shall be in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections sixty-four to one hundred and eighteen and to impose the punishment for that offence mentioned in the section prescribing that offence."

103.61—OFFENCES PUNISHABLE BY ORDINARY LAW—(Cont'd)

(2) The statement of the offence in a charge under section one hundred and nineteen should be in the following form:

A civil offence, that is to say, (*state the offence and the enactment under which it is prescribed*).

(M)

NOTES

(A) The purpose of this section is to give the character of service offences to all civil offences prescribed in statutes of the Dominion Parliament. Offences prescribed in provincial statutes are not service offences and cannot be tried by service tribunals, for example, an infraction of a provincial Highway Traffic Act would not be triable by a court martial.

(B) It is to be noted that, although the *Criminal Code* and other Dominion statutes do not normally apply to acts done or omissions in foreign countries, by virtue of subsection (1)(b) civil offences prescribed in Dominion statutes are incorporated in the Code of Service Discipline and those offences may be tried by a service tribunal even if committed outside of Canada.

(M)

103.62—CONVICTION OF RELATED OR LESS SERIOUS OFFENCES

(1) *The National Defence Act* provides:

"120. (1) A person charged with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged with attempting to desert may be found guilty of being absent without leave.

(3) A person charged with any one of the offences prescribed in section seventy-five (*article 103.07—"Striking or Offering Violence to a Superior Officer"*) may be found guilty of any other offence prescribed in that section.

(4) A person charged with any one of the offences prescribed in section seventy-six (*article 103.18—"Insubordinate Behaviour"*) may be found guilty of any other offence prescribed in that section.

(5) A person charged with a service offence may, on failure of proof of an offence having been committed under circumstances involving a higher punishment, be found guilty of the same offence as having been committed under circumstances involving a lower punishment.

(6) Where a person is charged with an offence under section one hundred and nineteen (*article 103.61—"Offences Punishable by Ordinary Law"*) and the charge is one upon which, if he had been tried by a civil court in Canada for that offence, he might have been found guilty of any other offence, he may be found guilty of that other offence."

(M)

103.62—CONVICTION OF RELATED OR LESS SERIOUS OFFENCES—(Cont'd)

NOTES

- (A) It is not necessary to charge a person alternatively in respect of the various offences mentioned in this section in order to convict him of one of the related or less serious offences.
- (B) Except in the cases mentioned in this section, a service tribunal has no power to find a person guilty of any offence other than one with which he is actually charged.
- (C) Subsection (5) relates to a situation where the maximum punishment varies in accordance with the circumstances, for example, where death is prescribed as the maximum punishment if an act is done treacherously, and life imprisonment is the maximum punishment in other cases. When an accused is charged with having done an act treacherously and the court finds that the evidence shows that he committed the act but not treacherously, it is competent to the court to make a finding of that fact. Such a finding is a finding of guilty but does not carry with it the higher degree of punishment which would be entailed by the original charge.
- (D) Subsection (6) relates to a case in which a person is charged with having committed a civil offence by virtue of a Dominion statute and that statute authorizes his conviction on some other offence. For example, if an accused is charged with having committed murder, the *Criminal Code* provides that a civil court may find him guilty of manslaughter and a court martial would have the same power.

(M)

(103.63 TO 103.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 104

PUNISHMENTS AND SENTENCES

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

*Section 1 — Explanation***104.01—CONTENTS OF CHAPTER**

(1) This chapter contains the punishments that may be imposed for service offences, together with the general conditions applicable to those punishments.

(2) Limitations upon the powers of punishment of particular classes of service tribunals are prescribed as follows:

- (a) Summary Trials by Commanding Officers—Chapter 108;
- (b) General Courts Martial—Section 3 of Chapter 111;
- (c) Disciplinary Courts Martial—Section 4 of Chapter 111; and
- (d) Special General Courts Martial—Section 1 of Chapter 113. (23 Jan 56)

(3) Provisions relating to the execution of punishments appear in Chapter 114.

(C)

*Section 2 — Punishments***104.02—SCALE OF PUNISHMENTS**

Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (1) The following punishments may be imposed in respect of service offences:

- (a) death;
- (b) imprisonment for two years or more;
- (c) dismissal with disgrace from Her Majesty’s service;
- (d) imprisonment for less than two years;
- (e) dismissal from Her Majesty’s service;
- (f) detention;
- (g) reduction in rank;
- (h) forfeiture of seniority;
- (i) dismissal of an officer from the ship to which he belongs;
- (j) severe reprimand;
- (k) reprimand;
- (l) fine; and
- (m) minor punishments;

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale, in this Act referred to as the “scale of punishments”.”

(C)

(29 May 52)

104.03—MEANING OF “LESS PUNISHMENT”

Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (2) Where a punishment is specified by the Code of Service Discipline as a penalty for an offence, and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression “less punishment” means any one or more of the punishments lower in the scale of punishments than the specified punishment.”

(C)

104.04—DEATH

Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (3) A punishment of death may be imposed only by a General Court Martial, and may be imposed only with the concurrence of at least two-thirds of the members.”

(C)

NOTES

(A) The president is one of the “members” of a court martial.

(M)

104.05—IMPRISONMENT FOR TWO YEARS OR MORE AND IMPRISONMENT FOR LESS THAN TWO YEARS

Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (4) The punishment of imprisonment for two years or more or imprisonment for less than two years is subject to the following conditions:

- (a) every person who, on conviction of a service offence, is liable to imprisonment for life or for a term of years or other term, may be sentenced to imprisonment for a shorter term;
- (b) a sentence that includes a punishment of imprisonment for two years or more imposed upon an officer shall be deemed to include a punishment of dismissal with disgrace from Her Majesty’s service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
- (c) a sentence that includes a punishment of imprisonment for less than two years imposed upon an officer shall be deemed to include a punishment of dismissal from Her Majesty’s service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
- (d) where a service tribunal imposes a punishment of imprisonment for two years or more upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal with disgrace from Her Majesty’s service;
- (e) where a service tribunal imposes a punishment of imprisonment for less than two years upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal from Her Majesty’s service;

104.05—IMPRISONMENT FOR TWO YEARS OR MORE AND IMPRISONMENT FOR LESS THAN TWO YEARS—(Cont'd)

- (f) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
- (g) a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to be a punishment of imprisonment with hard labour, but in the case of a punishment of imprisonment for less than two years, the Minister or such authorities as he may prescribe or appoint for that purpose may order that such punishment shall be without hard labour."

(C)

NOTES

- (A) With reference to paragraph (f), article 104.09 (*Reduction in Rank*) indicates the lowest rank to which an offender may be reduced.
- (B) A punishment of imprisonment for two years or more cannot be altered to one "without hard labour" under paragraph (g).
- (C) Before making an order that a punishment of imprisonment for less than two years be "without hard labour", the appropriate authority should acquaint himself with the nature of the institution where the offender would serve his punishment and the conditions of incarceration that would apply as a consequence of alteration in the punishment.

(M)

104.06—DISMISSAL WITH DISGRACE FROM HIS MAJESTY'S SERVICE

The National Defence Act provides:

"121. (5) Where a service tribunal imposes a punishment of dismissal with disgrace from His Majesty's service upon an officer or man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of imprisonment for less than two years.

(6) A person upon whom a punishment of dismissal with disgrace from His Majesty's service has been carried out shall not, except in an emergency or unless that punishment is subsequently set aside or altered, be eligible to serve His Majesty again in any military or civil capacity."

(C)

104.07—DISMISSAL FROM HIS MAJESTY'S SERVICE

The punishment of dismissal from His Majesty's service does not carry with it the incapacities accompanying the punishment of dismissal with disgrace from His Majesty's service.

(C)

104.08—DETENTION

(1) *The National Defence Act* provides:

“121. (7) The punishment of detention is subject to the following conditions:

- (a) detention shall not exceed two years and a person sentenced to detention shall not be subject to detention for more than two years consecutively by reason of more than one conviction;
- (b) no officer may be sentenced to detention;
- (c) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of detention shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.”

(2) No female person may be sentenced to detention.

(G)

NOTES

- (A) With reference to paragraph (c) of section 121(7), article 104.09 (*Reduction in Rank*) prescribes the lowest rank to which an offender may be reduced.
- (B) When the term of a punishment of detention exceeds 90 days, it should be expressed in months, any fraction of a month being stated in days. When the term is 90 days or less, it should be expressed in days.
- (C) Other limitations relating to the imposition of this punishment by the Commanding Officer at a Summary Trial appear in article 108.44 (*Detention (Punishment No. 1)*).

(M)

104.09—REDUCTION IN RANK

(1) Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (8) The punishment of reduction in rank shall apply to.....
chief petty officers, petty officers, non-commissioned officers and leading ratings.

(9) The punishment of reduction in rank shall not

- (a) involve reduction to a rank lower than that to which under regulations the offender can be reduced;”

(2) The punishment of reduction in rank shall not be imposed upon an officer.

(3) The lowest rank to which a chief petty officer, petty officer or leading seaman may be reduced is:

- (a) the “Reduction or Reversion Limit” prescribed for the offender’s rank in the tables contained in chapter 14; or
- (b) the actual or equivalent rank in which the offender was first enrolled, or, in cases of re-enrolment under a fresh engagement with no continuity of service, the actual or equivalent rank in which he re-enrolled;

whichever is the higher rank.

(G)

104.09—REDUCTION IN RANK—(Cont'd)

NOTES

- (A) When imposing a punishment of reduction in rank, a service tribunal must specify the rank to which the offender is reduced.
- (B) Although section 121 (8) and (9) of *The National Defence Act*, read by itself, permits the punishment of reduction in rank to be imposed upon an officer, power to impose this punishment may be limited by regulations made by the Governor in Council (*See The National Defence Act—Section 121(14)*). Paragraph (2) has the effect of precluding a service tribunal from imposing this punishment upon an officer.
- (C) A man holding an acting rank may be reduced in rank in the same way as if his rank were confirmed. (*See article 101.02—"How Ranks to be Construed"*)

(M)

104.10—FORFEITURE OF SENIORITY

- (1) Section one hundred and twenty-one of *The National Defence Act* provides in part:
"121. (10) Where an officer or man has been sentenced to forfeiture of seniority, the service tribunal imposing the punishment shall in passing sentence specify the period for which seniority is to be forfeited."
- (2) An offender cannot, by a punishment of forfeiture of seniority, be deprived of more seniority than he holds in his rank at the time of the imposition of the punishment.
- (3) Where a punishment of forfeiture of seniority is imposed, the period of forfeiture shall be expressed in terms of years, months and days, as applicable.
- (4) The punishment shall not include any reference to the place to which the offender is relegated in the Navy List.

(M)

NOTES

- (A) A service tribunal should, if possible, consult the current Navy List to determine the effect of any proposed punishment of forfeiture of seniority. In some cases the punishment of loss of even one day's seniority may be quite severe.
- (B) If the effect of a punishment of forfeiture of seniority would be to place an offender among others whose seniority dates from the same day, the relative seniority as between the offender and those other persons is determined under article 3.11 (*Seniority from Same Date*).

(M)

104.11—DISMISSAL OF AN OFFICER FROM THE SHIP TO WHICH HE BELONGS

The punishment of dismissal of an officer from the ship to which he belongs means dismissal from the ship or fleet establishment to which the officer belongs at the time the punishment is imposed.

(M)

NOTES

- (A) This punishment is expressed in the sentence in the following form:
 "Dismissal from HMCS "

(M)

104.12—FINE

Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (12) A fine shall be imposed in a stated amount and shall not exceed, in the case of an officer or man, three months basic pay, and in the case of any other person the sum of two hundred dollars, and the terms of payment of a fine shall lie within the discretion of the commanding officer of the person so punished.”

(C)

NOTES

- (A) When a service tribunal imposes a fine, the punishment must be expressed in terms of dollars; it cannot be expressed in terms of a certain number of day's pay.
- (B) In determining the terms of payment of fines, commanding officers should have regard to the state of the offender's pay account and, to whatever extent is practical, the financial obligations of the offender.

(M)

104.13—MINOR PUNISHMENTS

(1) Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (13) Minor punishments shall be such as are prescribed in regulations made by the Governor in Council.”

(2) The following minor punishments may be imposed in respect of service offences:

- (a) deprivation of good conduct badges;
- (b) extra work and drill;
- (c) stoppage of leave;
- (d) stoppage of grog;
- (e) extra work or drill not exceeding two hours a day; and
- (f) caution.

(G)

NOTES

- (A) The punishments prescribed in (2) of this article may only be imposed at summary trials held under Chapter 108 (*Summary Trials by Commanding Officers*). The nature of those punishments and the limitations upon their imposition are prescribed in that chapter.

(M)

Section 3—Sentences**104.14—ONE SENTENCE ONLY MAY BE PASSED**

The National Defence Act provides:

“122. Only one sentence shall be passed on an offender at a trial under the Code of Service Discipline and, where the offender is convicted of more than one offence, the sentence shall be good if any one of the offences would have justified it.”

(C)

NOTES

(A) “Sentence” means the sum total of all punishments imposed upon an offender by a service tribunal at one trial.

(M)

(104.15 TO 104.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 105

CUSTODY BEFORE CONVICTION

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

Section 1—Explanation**105.01—MEANING OF “ARREST” AND “CUSTODY”**

(1) The expression “arrest” relates to the apprehension of an alleged offender and also to his custody from the time of apprehension until he has been discharged from custody or until his case has been disposed of.

(2) An alleged offender under arrest may be:

- (a) in “close custody” (see Section 3—“Close Custody”), which involves restraint under escort or guard, whether in confinement or not; or
- (b) in “open custody” (see Section 4—“Open Custody”), which involves curtailment of privileges but not restraint under escort or guard.

(G)

NOTES

- (A) A person against whom a charge has been or may be preferred need not necessarily be placed under arrest. The circumstances surrounding each case should be considered in order to determine whether arrest is appropriate.

(M)

105.02—CUSTODY AFTER CONVICTION

The provisions of this chapter relate to custody before conviction and not to custody following conviction.

(C)

Section 2—Placing Under Arrest**105.03—GENERAL AUTHORITY TO ARREST**

The National Defence Act provides:

“127. (1) Every person who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence, may be placed under arrest.

(2) Every person authorized to effect arrest under this Part (*National Defence Act, Part VI, ARREST*) may use such force as is reasonably necessary for that purpose.”

(C)

105.04—POWERS OF OFFICERS TO ARREST

Section one hundred and twenty-eight of *The National Defence Act* provides in part:

“128. (1) An officer may, without a warrant, in the circumstances mentioned in section one hundred and twenty-seven (*article 105.03—“General Authority To Arrest”*) arrest or order the arrest of:

- (a) any man;
- (b) any officer of equal or lower rank; and
- (c) any officer of higher rank who is engaged in a quarrel, fray or disorder.”

(C)

105.05—POWERS OF MEN TO ARREST

Section one hundred and twenty-eight of *The National Defence Act* provides in part:

“128. (2) A man may, without a warrant, in the circumstances mentioned in section one hundred and twenty-seven (*article 105.03—“General Authority to Arrest”*), arrest or order the arrest of:

- (a) any man of lower rank; and
- (b) any man of equal or higher rank who is engaged in a quarrel, fray or disorder.”

(C)

105.06—SCOPE OF ORDER TO ARREST

Section one hundred and twenty-eight of *The National Defence Act* provides in part:

“128. (3) An order given under subsection one (*article 105.04—“Powers of Officers to Arrest”*) or subsection two (*article 105.05—“Powers of Men to Arrest”*) shall be obeyed although the person giving the order and the person to whom and the person in respect of whom the order is given do not belong to the same service, component, unit or other element of the Canadian Forces.”

(C)

105.07—AUTHORITY TO ARREST CIVILIANS

Section one hundred and twenty-eight of *The National Defence Act* provides in part:

“128. (4) Every person who is not an officer or man, but who was subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence, may without a warrant be arrested or ordered to be arrested by such person as any commanding officer may designate for that purpose.”

(C)

105.08—ARREST OF OFFENDER ON AUTHORITY OF SUPERIOR

An officer or man who receives from a superior an order to effect an arrest shall carry out that order notwithstanding that such officer or man could not have made the arrest on his own responsibility.

(M)

105.09—SPECIALLY APPOINTED PERSONNEL

The National Defence Act provides:

“129. Such officers and men as are appointed under regulations for the purposes of this section may

- (a) detain or arrest without a warrant any person who is subject to the Code of Service Discipline, regardless of the rank or status of that person, who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence; and
- (b) exercise such other powers for carrying out the Code of Service Discipline as are prescribed in regulations made by the Governor in Council.”.

(C)

NOTES

(A) The officers and men referred to in this article are members of Provost Corps or Shore Patrol organized as such under regulations. There is not normally any such organization in the navy except during an emergency. The article applies to army and air force Provost Corps.

(M)

105.095—ARREST AND HAND-OVER OF DEPENDANTS

(1) Section 217A of the *National Defence Act* provides:

‘217A. The dependants, as defined by regulation, of members of the Canadian Forces on service or active service in any place out of Canada who are alleged to have committed an offence under the laws applicable in such place may be arrested by such officers and men as are appointed under section 129 and may be handed over to the appropriate authorities of such place.’.

(2) For the purposes of section 217A of the *National Defence Act*, “dependants” of a member of the Canadian Forces means:

- (a) his spouse; and
- (b) any other person wholly or mainly maintained by him or in his custody, charge or care.

(M)

(8 Jul 55)

105.10—ARREST UNDER WARRANT

The National Defence Act provides:

“130. (1) Subject to subsection two, every commanding officer, and every officer to whom the power of trying a charge summarily has been delegated under subsection three of section one hundred and thirty-six (*article 108.10—“Delegation of Commanding Officer’s Powers”*) may by a warrant under his hand authorize any person to arrest any other person triable under the Code of Service Discipline who has committed, or is suspected of or charged under this Act with having committed a service offence.

105.10—ARREST UNDER WARRANT—(Cont'd)

- (2) An officer authorized to issue a warrant under this section shall not, unless he has certified on the face of the warrant that the exigencies of the service so require, issue a warrant authorizing the arrest of any officer of rank higher than he himself holds.
- (3) In any warrant issued under this section the offence in respect of which the warrant is issued shall be stated and the names of more persons than one in respect of the same offence, or several offences of the same nature, may be included.
- (4) Nothing in this section shall be deemed to be in derogation of the authority that any person, including an officer or man, may have under other sections of this Act or otherwise under the law of Canada to arrest any other person without a warrant.”.

(C)

105.11—FORM OF WARRANT OF ARREST

(1) Every warrant issued for the purpose of effecting an arrest under article 105.10 (Arrest Under Warrant) shall be in the following form, or to the like effect, but the form may be varied to suit the facts of the case:

WARRANT OF ARREST

To.....
and all others whom he may call upon to assist him in the execution of this warrant.

(Strike out words that do not apply) I,....., an officer having, under Section 130 of *The National Defence Act*, authority to issue a warrant of arrest, hereby authorize you and all others aforesaid to arrest.....
(rank) (name) (number)
of the (Royal Canadian Navy) (Canadian Army) (Royal Canadian Air Force) who is alleged to have committed an offence under *The National Defence Act*, that is to say,

.....;
(specify offence)

AND you are to place him in close custody and (bring him to this ship or establishment) (take him to the nearest unit or other element of the Canadian Forces) (take him to the nearest civil gaol) in order that he may answer for the said offence and be further dealt with according to law.

(National Defence Act, sec. 130 (2)) (Although the aforesaid.....
(name of alleged offender)
holds a rank higher than mine, I certify that the exigencies of the service require me to issue this warrant authorizing his arrest.)

GIVEN under my hand this.....day of.....19....

.....
(name) (rank)
.....
(appointment and ship or establishment)

105.11—FORM OF WARRANT OF ARREST—(Cont'd)

(2) Any document that contains:

- (a) the name of the person to be arrested;
- (b) a statement of the substance of the offence;
- (c) authorization to arrest the person named; and
- (d) where the alleged offender is of higher rank than the officer issuing the warrant, a statement that the exigencies of the service require the issue of the warrant,

shall be sufficient warrant for the arrest of that person notwithstanding that it deviates from the form prescribed in (1) of this article.

(M)

105.12—HOW ARREST EFFECTED

When a person is arrested he should immediately be informed:

- (a) that he is under arrest; and
- (b) that he is either
 - (i) in close custody, or
(see Section 3—"Close Custody")
 - (ii) in open custody.
(see Section 4—"Open Custody")

(C)

Section 3—Close Custody**105.13—WHEN CLOSE CUSTODY ADVISABLE**

An alleged offender who has been arrested should, when practical, be held in close custody if:

- (a) the offence is of a serious nature; or
- (b) it is likely that he would otherwise continue the offence or commit another offence; or
- (c) close custody is considered necessary for his protection or safety.

(G)

105.14—HOW CLOSE CUSTODY EFFECTED

When circumstances require that an alleged offender be held in close custody, the person arresting him shall forthwith place him or cause him to be placed under escort or guard.

(G)

105.15—CLOSE CUSTODY OF SUBORDINATE

When it is necessary for a person to arrest anyone junior in rank to himself and hold him or cause him to be held in close custody, he shall, if practical, obtain the assistance of one or more persons of rank equal or junior to that of the person who is to be arrested, and he shall not, unless his assistance becomes essential, physically participate in the arrest.

(G)

105.16—PRELIMINARY DISPOSITION OF PERSON IN CLOSE CUSTODY

(1) Section one hundred and thirty-one of *The National Defence Act* provides in part:

"131. (1) A person arrested under this Part may forthwith on his apprehension be placed in civil custody or service custody or be taken to the unit or formation with which he is serving or to any other unit or formation of the Canadian Forces; and such force as is reasonably necessary for the purposes of this section may be used."

(2) When practical, a person arrested should be placed in service custody rather than in civil custody.

(C)

105.17—PERSON IN CLOSE CUSTODY ENTITLED TO INFORMATION

An officer or man in charge of a place where a person is placed in close custody shall, upon the request of any person received into close custody, declare to him the rank and name of the person who committed him into close custody and on request shall give him, as soon as it is received, a copy of the account in writing referred to in article 105.18—(*Duty to Take Over Close Custody—Account in Writing*).

(G)

105.18—DUTY TO TAKE OVER CLOSE CUSTODY—ACCOUNT IN WRITING

Section one hundred and thirty-one of *The National Defence Act* provides in part:

“131. (2) An officer or man commanding a guard, guardroom or safeguard or an officer or man appointed under section one hundred and twenty-nine (*provost*) shall receive and keep a person who is under arrest pursuant to this Act and who is committed to his custody, but it shall be the duty of the officer, man or other person who commits a person into custody to deliver at the time of such committal, or as soon as practical and in any case within twenty-four hours thereafter, to the officer or man into whose custody that person is committed, an account in writing, signed by himself, in which is stated the reason why the person so committed is to be held in custody.”

(C)

105.19—DISCHARGE FROM CLOSE CUSTODY WHERE ACCOUNT OF OFFENCE NOT DELIVERED

Where a person has been received and kept in close custody under article 105.18—(*Duty to Take Over Close Custody—Account in Writing*) and the account in writing prescribed in that article is not delivered within twenty-four hours, the officer or man into whose custody that person has been committed shall, as soon as practical after the expiration of that time, discharge him from custody.

(G)

105.20—REPORT OF CLOSE CUSTODY TO SUPERIOR AUTHORITY

Section one hundred and thirty-one of *The National Defence Act* provides in part:

“131. (3) An officer or man who, pursuant to subsection two (*article 105.18—“Duty To Take Over Close Custody—Account in Writing”*), receives a person committed to his custody shall, as soon as practical and in any case within twenty-four hours thereafter, give in writing to the officer or man to whom it is his duty to report, the name of that person and an account of the offence alleged to have been committed by that person so far as is known and the name and rank of the officer, man or other person by whom the person so committed was placed in custody, accompanied by any account in writing which has been submitted pursuant to subsection two.”

(C)

(105.21: NOT ALLOCATED)

105.22—PERSONS IN INTERIM CUSTODY

(1) When an officer or man is in the custody of a unit or element of the navy other than that to which he belongs, the officer or man in charge of such unit or element shall, within forty-eight hours after the custody commences, notify the unit to which the person in custody belongs and the officer in command of that unit shall forthwith arrange for his disposal.

(2) When an officer or man is in the custody of any army, air force or civil authority, it shall be the duty of the officer in command of any unit or other element of the navy, upon request, immediately to take over the person in custody or cause him to be taken over by other navy authority.

(G)

105.225—CONDITIONS OF CLOSE CUSTODY OF OFFICERS AND CHIEF PETTY OFFICERS (SEE ALSO ARTICLE 105.24)

An officer or chief petty officer in close custody shall normally be confined to quarters under the charge, where practical, of an escort of at least equal rank, but may in exceptional circumstances be placed under the charge of a guard.

(G)

105.23—CONDITIONS OF CLOSE CUSTODY OF MEN OTHER THAN CHIEF PETTY OFFICERS (SEE ALSO ARTICLE 105.24)

(1) Subject to article 105.27—(*When Persons in Close Custody Sent to Hospital*), a man, other than a chief petty officer, in close custody shall be confined:

- (a) in a cell or guard-room under the charge of a guard; or
- (b) if no cell or guard-room is available, in any other suitable place at the unit; or
- (c) if no other suitable place is available, in a place where persons awaiting trial for civil offences may lawfully be confined, but not for longer than seven days.
(*For form of committal, see article 114.22.*)

(2) The commanding officer shall ensure, when practical, that a man in close custody is visited at least once daily by a medical officer and is supplied with bedding.

(3) A petty officer or leading rating in close custody shall, when practical, be confined in a cell, guard-room or other place separate from men of lower rank.

(G)

105.24—CONDITIONS OF CLOSE CUSTODY COMMON TO OFFICERS AND MEN

(1) An officer or man not on active service who is in close custody shall not be required to perform any duty except such as may be necessary to relieve him of the charge of any cash, accounts or materiel for which he is responsible or, in the case of a man, such as may be required of him to keep his cell in good order.

**105.24—CONDITIONS OF CLOSE CUSTODY COMMON TO OFFICERS AND MEN
—Cont'd)**

(2) An officer or man on active service who is in close custody may be ordered to perform any duties which he might properly have been ordered to perform if he had not been in close custody, but care shall be taken to ensure that he is not required, by reason only of his being an alleged offender, to perform any duties in addition to those required of others.

(3) Notwithstanding anything in this article, an order given to an officer or man in close custody to perform a duty or the performance of a duty by him shall not relieve him from liability to be proceeded against for the offence for which he was arrested.

(4) An officer or man in close custody may be deprived of all articles which might enable him to harm himself or others or might facilitate his escape or the escape of others, except when he is required to carry out any duty under (2) of this article which involves the bearing of arms.

(5) Unless with the permission of the commanding officer, no person shall be admitted to the place where an officer or man is held in close custody, except:

- (a) the master-at-arms;
- (b) a chaplain;
- (c) a medical officer;
- (d) the persons immediately responsible for his custody;
- (e) when the accused is awaiting summary trial, an assisting officer if one has been detailed; and
- (f) if the accused is awaiting trial by court martial
 - (i) his defending officer or counsel,
 - (ii) his adviser, and
 - (iii) if he has no defending officer or counsel his witnesses.

(6) An officer or man in close custody shall be permitted to send letters and telegrams and to read all correspondence addressed to him; except that the commanding officer may, on the grounds of security, direct that all letters, telegrams and other correspondence originated by or addressed to the person in close custody shall be scrutinized by an officer designated by the commanding officer, and an officer so designated may either hold any such correspondence or delete any portion of it.

(7) An officer or man in close custody may be permitted to take, under supervision, the exercise necessary to preserve his health.

(8) An officer or man in close custody shall be denied the privilege of his or any other mess.

(G)

105.25—SPECIAL CONDITIONS OF CLOSE CUSTODY OF WOMEN

(1) Female persons shall not be held in close custody in the same accommodation as is provided for male officers or men.

105.25—SPECIAL CONDITIONS OF CLOSE CUSTODY OF WOMEN—(Cont'd)

(2) Female persons shall not be held in close custody in the charge of male guards, except where other arrangements are not practical and then only for as short a time as possible.

(G)

105.26—OBSERVATION OF PERSONS IN CLOSE CUSTODY

When a man other than a chief petty officer is held in close custody, or when an officer or chief petty officer is held in close custody in a place other than his cabin, he shall be observed by the person in charge of the place where he is in close custody at least once every hour for the first three hours after he arrives at that place and at least once every two hours thereafter. If any symptoms of illness are observed, the Medical Officer shall be sent for immediately.

(G)

105.27—WHEN PERSONS IN CLOSE CUSTODY SENT TO HOSPITAL

When an officer or man in close custody is sent to a hospital, he shall, while in hospital and while being transferred to and from hospital, continue to be held in close custody, unless he is ordered to be released from close custody by a commanding officer under article 105.29 (*Subsequent Disposition of Person in Close Custody*).

(G)

105.28—CUSTODY OF ACCUSED DURING TRIAL

(1) Unless otherwise directed under (4) of this article, an accused person, whether or not he is already in close custody, shall be held in close custody for the duration of his trial before a service tribunal.

(2) An officer or man, while before a service tribunal for trial, shall be in the charge of an escort who shall when practical be an officer or man, as the case may be, of equivalent or higher rank. The escort shall be responsible for the safe custody of the accused person, but shall obey the directions of the service tribunal while the trial is in progress.

(3) An accused person shall not be handcuffed while before a service tribunal, unless it is necessary for the purpose of preventing escape or violent conduct.

(4) The officer presiding at a summary trial or the president of a court martial may, for such period of the trial or of any adjournment as he directs, cause an accused person to be discharged from close custody and may or may not order him to be placed in open custody for all or any part of that period. (*see Section 4—"Open Custody"*).

(5) When a person has been discharged from close custody under (4) of this article, whether placed in open custody or not, the officer presiding at a summary trial or the president of a court martial, as the case may be, may cause him again to be placed in close custody.

(G)

105.29—SUBSEQUENT DISPOSITION OF PERSON IN CLOSE CUSTODY

(1) When under article 105.16 (*Preliminary Disposition of Person in Close Custody*), a person has been placed in civil custody or service custody or is taken to a unit, a commanding officer may order that person:

- (a) to continue to be held in close custody; or
- (b) to be discharged from close custody and placed in open custody (*see Section 4—“Open Custody”*); or
- (c) to be discharged from close custody, without placing him in open custody.

(2) When a person has been continued in close custody under (1)(a) of this article, a commanding officer may at any time discharge him from close custody and at the same time, or at any time prior to disposal of the case, may place him in open custody. (*see Section 4—“Open Custody”*.)

(3) When all the charges against a person in close custody have been dismissed, the commanding officer shall immediately order that person to be discharged from custody.

(4) When a person has been discharged from close custody, a commanding officer may, subject to subsection three of section one hundred and thirty-two of *The National Defence Act* (article 105.34—*“Limitations in Respect to Custody”*), at any time again place him in close custody in respect of the offence with which he was originally charged.

(G)

Section 4—Open Custody**105.30—WHEN PERSON IN OPEN CUSTODY**

Every alleged offender who is under arrest, but who is not in close custody, is in open custody and shall continue to be in open custody until under KRCN he is either placed in close custody or discharged from custody.

(G)

105.31—CONDITIONS OF OPEN CUSTODY

(1) An officer or man in open custody shall not:

- (a) leave his ship or establishment, except as authorized by the commanding officer;
or
- (b) visit any wet canteen; or
- (c) appear at any place of entertainment; or
- (d) appear outside his quarters, dressed otherwise than in uniform.

(2) An officer or man in open custody may:

- (a) be mustered as often as is necessary to keep the authorities informed of his presence on board; and

105.31—CONDITIONS OF OPEN CUSTODY—(Cont'd)

- (b) be required to perform any duties which he might properly have been required to perform if he were not in open custody, but care should be taken to ensure that he is not required, by reason of his being an alleged offender, to perform any duties in addition to those required of others.

(G)

105.32—SUBSEQUENT DISCHARGE OF PERSON FROM OPEN CUSTODY

(1) An officer or man may be discharged from open custody at any time by or under the authority of a commanding officer.

(2) When all the charges against a person in open custody have been dismissed, the commanding officer shall immediately order that person to be discharged from custody.

(3) When an officer or man is placed in close custody, he shall thereupon cease to be in open custody.

(4) When an officer or man has been in open custody and has been discharged therefrom under (1) of this article, he may again be placed in open custody or in close custody by or under the authority of a commanding officer for the offence with which he was originally charged.

(G)

Section 5—Special Provisions**105.33—SPECIAL REPORT IN CASE OF OFFICERS**

(1) In addition to any report required under article 105.20 (*Report of Close Custody to Superior Authority*), when an officer is arrested, the commanding officer shall immediately report the case to Naval Headquarters.

(2) When an officer, having been arrested, is discharged from custody and has not been remanded for trial, the commanding officer shall send a report of the circumstances to Naval Headquarters.

(C)

105.34—LIMITATIONS IN RESPECT OF CUSTODY

(1) *The National Defence Act* provides:

“132. (1) Where a person triable under the Code of Service Discipline has been placed under arrest for a service offence and remains in custody for eight days without a summary trial having been held or a court martial for his trial having been ordered to assemble, a report stating the necessity for further delay shall be made by his commanding officer to the authority who is empowered to convene a court martial for the trial of that person, and a similar report shall be forwarded in the same manner every eighth day until a summary trial has been held or a court martial has been ordered to assemble.

105.34—LIMITATIONS IN RESPECT OF CUSTODY—(Cont'd)

(2) Every person held in custody in the circumstances mentioned in subsection one, who has been continuously so held for a period of twenty-eight days without a summary trial having been held or a court martial having been ordered to assemble, shall at the expiration of that period be entitled to direct to the Minister, or to such authority as the Minister may prescribe or appoint for that purpose, a petition to be freed from custody or for a disposition of the case and in any event that person shall be so freed when a period of ninety days continuous custody from the time of his arrest has expired, unless a summary trial has been held or a court martial has been ordered to assemble.

(3) A person who has been freed from custody pursuant to subsection two shall not be subject to re-arrest for the offence with which he was originally charged, except on the written order of an authority having power to convene a court martial for his trial."

(2) The report referred to in (1) of this article may be in letter, memorandum or message form.

(C)

(105.35 TO 105.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 106

PREPARATION OF CHARGE FORMS

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

Section 1—Explanation**106.01—MEANING OF “CHARGE”**

For the purposes of proceedings under the Code of Service Discipline, a charge is a formal accusation that a person amenable to that Code has committed a service offence.

(C)

106.02—WHEN CHARGE REPORT PREPARED

(1) Every charge under *The National Defence Act* against an officer or man shall initially be recorded on a charge report.

(2) A charge report shall be:

(a) in writing; and

(b) prepared in accordance with Section 2 of this Chapter.

(M)

NOTES

(A) Charge reports are not prepared when the accused is a civilian subject to the Code of Service Discipline. In such a case, the initial action is preparation of a charge sheet.

(M)

106.03—WHEN CHARGE SHEET PREPARED

A charge sheet shall be prepared in accordance with Section 3 of this Chapter when a charge is referred to a convening authority with a recommendation for trial by court martial.

(M)

Section 2—Preparation of Charge Reports**106.04—GENERAL PROVISIONS**

(1) Every charge report shall contain:

(a) a commencement (*see article 106.05*); and

(b) the charge or charges (*see article 106.06*).

106.04—GENERAL PROVISIONS—(Cont'd)

(2) All charges should be included in one charge report but, when it is considered desirable, the charges may be recorded in separate charge reports.

(3) If there is more than one charge in a charge report, the charges should be numbered and, when charges are laid in the alternative, the alternative nature of the charges involved shall be indicated on the charge report.

(4) The section of *The National Defence Act* under which a charge is laid should be set out in a charge report.

(5) A separate charge report shall be prepared for each person charged.

(6) Every charge report should contain a minute, to be signed by each officer dealing with the case, showing the action that he has taken.

(7) Every charge report should contain a list of the witnesses whom it is expected will be called on the hearing of the charge.

(M)

NOTES

(A) For form of charge reports, see article 106.09.

(B) The list of witnesses should not be compiled with reference to any particular charge in the charge report nor should any indication be given of the evidence that may be expected.

(M)

106.05—COMMENCEMENT

Every charge report shall begin with the rank, name, number and ship or establishment of the person charged.

(M)

106.06—CHARGES

Each charge in a charge report shall:

(a) allege one offence only; and

(b) contain

(i) a statement of the offence with which the accused is charged (*see article 106.07*), and

(ii) a statement of the particulars of the act, omission, conduct, disorder or neglect constituting the offence (*see article 106.08*).

(M)

NOTE

(A) As an example of the rule prescribed in (a), a single charge under Section 66(i) of *The National Defence Act* alleging that the accused "forced or struck a sentinel" would be a bad charge as it would allege two separate offences.

(M)

Every statement of an offence in a charge report should be drawn in accordance with the appropriate form prescribed in Chapter 103 (*Service Offences*).

(M)

(1) Every statement of the particulars of an offence in a charge report shall include sufficient details to enable the accused to know exactly what he is charged with, so that he may prepare his defence and direct it to the occasion and the events indicated in the charge.

(2) A statement of the particulars of an offence should, when practical, include an allegation of the place, date and time of the alleged commission of the offence.

(M)

(A) If the actual date or time is not certain, the date or time of the alleged commission of the offence may be described as "on a day between" two limiting dates, "between" and "or "at approximately", but when this is done, care should be taken to make as close an estimate as the circumstances permit.

(M)

A charge report should be prepared in the following form:

PART I

THE ACCUSED,
 (rank) (christian names) (surname) (number)

 (service) (component) (ship or establishment)

is charged with having committed the following offence(s):

Charge Number	Section of NDA	Statement of Offence	Statement of Particulars

Witnesses

106.09—FORM OF CHARGE REPORTS—(Cont'd)

(Reverse side of Form)

PART II

<i>Disposition of Charges:</i>	<i>Signature of Officer dealing with case</i>	<i>Date</i>
Referred to		
To be held in.....custody	.....	.....
(close or open)	(name and rank)	
OR	.....
Not to be held in custody	(office)	
Referred to		
To be held in.....custody	.....	.....
(close or open)	(name and rank)	
OR	.....
Not to be held in custody	(office)	
Referred to		
To be held in.....custody	.....	.....
(close or open)	(name and rank)	
OR	.....
Not to be held in custody	(office)	
Dismissed or found not guilty of charge(s) number(s) .....	.....	.....
	(name and rank)	
	
	(office)	
Guilty of charge(s) number(s)..... and sentenced without punishment warrant to .....	.....	.....
	(name and rank)	
	
	(office)	
Guilty of charge(s) number(s)..... and sentenced, after approval of punishment warrant, to .....	.....	.....
	(name and rank)	
	
	(office)	
Charge sheet prepared and referred to superior authority .....	.....	.....
	(name and rank)	
	
	(office)	

Section 3—Preparation of Charge Sheets

106.10—GENERAL PROVISIONS

(1) Every charge sheet shall contain:

- (a) a commencement (*see article 106.11*); and
- (b) the charge or charges (*see article 106.12*).

(2) A charge sheet shall be signed by the commanding officer of the person charged and shall show the date upon which it is so signed.

(3) All charges should normally be included in one charge sheet, but when the commanding officer or the convening authority considers it desirable, the charges shall be recorded in separate charge sheets.

(4) If there is more than one charge in a charge sheet, the charges should be numbered, and, when laid in the alternative, the alternative nature of the charges involved shall be indicated on a charge sheet.

(5) Every charge sheet should contain a note in the margin at the left of each charge indicating the section of *The National Defence Act* under which it is laid.

(6) A separate charge sheet shall be prepared for each person charged.

(M)

NOTES

(A) For specimen charge sheets, see article 106.15.

(M)

106.11—COMMENCEMENT

(1) Every charge sheet shall begin with the rank, name, number and ship or establishment of the person charged and an allegation that he was subject to the Code of Service Discipline at the time of the alleged commission of the offence.

(2) Subject to (3) of this article, the following form should be used at the commencement of every charge sheet:

The accused, (rank), (christian names), (surname), (number), (ship or establishment), Royal Canadian Navy (component), is charged with having committed the following offence(s).

(3) When a person other than an officer or man is charged, the following form should be used:

The accused (christian names in full), (surname), is charged with having, while subject to the Code of Service Discipline as (an officer) (a man), committed the following offence(s).

(M)

106.12—CHARGES

Each charge in a charge sheet shall

- (a) allege one offence only; and
- (b) be divided into two parts as follows:
 - (i) a statement of the offence with which the accused is charged (*see article 106.13*), and
 - (ii) a statement of the particulars of the act, omission, conduct, disorder or neglect constituting the offence (*see article 106.14*).

(M)

NOTES

- (A) As an example of the rule prescribed in (a), a single charge under Section 66(i) of *The National Defence Act* alleging that the accused “forced or struck a sentinel” would be a bad charge as it would allege two separate offences.

(M)

106.13—STATEMENT OF OFFENCE

Every statement of an offence in a charge sheet should be drawn in accordance with the appropriate form prescribed in Chapter 103 (*Service Offences*).

(M)

106.14—STATEMENT OF PARTICULARS

(1) Every statement of the particulars of an offence in a charge sheet shall include sufficient details to enable the accused to know exactly what he is charged with, so that he may prepare his defence and direct it to the occasion and the events indicated in the charge.

(2) A statement of the particulars of an offence should, when practical, include an allegation of the place, date and time of the alleged commission of the offence.

(M)

NOTES

- (A) If the actual date or time is not certain, the date or time of the alleged commission of the offence may be described as “on a day between” two limiting dates, “between hours and hours”, or “at approximately hours”, but, when this is done, care should be taken to make as close an estimate as the circumstances permit.

(M)

106.15—SPECIMENS

(1) The following is a specimen charge sheet containing two charges:

CHARGE SHEET

The accused, OSSMS John Joseph David DOE, No. 2222-H, H.M.C.S. "NONAME", Royal Canadian Navy, Regular Force, is charged with having committed the following offences:

DISOBEYED A LAWFUL COMMAND OF A
SUPERIOR OFFICER

Particulars:—in that he, in H.M.C.S. "NONAME", at approximately 1630, 12 July, 1950, did not leave the wet canteen when ordered to do so by P1ER2 R. J. Roe, No. 7777.

First Charge
Sec. 74
N.D.A.

ABSENTED HIMSELF WITHOUT LEAVE

Particulars:—In that he at 1630, 30 June, 1950, without authority, was absent from H.M.C.S. "NONAME", and remained absent until 1000, 11 July, 1950.

Second Charge
Sec. 81
N.D.A.

Signed

Captain
H.M.C.S. "NONAME"

14 July, 1950

(2) The following is a specimen charge sheet containing three charges, one of which is laid in the alternative:

CHARGE SHEET

The accused, P2ER2 John Joseph David DOE, No. 1111-H, H.M.C.S. "NONAME", Royal Canadian Navy, Regular Force, is charged with having committed the following offences:

STEALING

Particulars:—in that he in H.M.C.S. "NONAME", on 13 July, 1950, stole a wrist-watch bearing the initials "K.R.", the property of OSSMS K.Roe, No. 3333-H.

First Charge
(Alternative to
Second Charge)
Sec. 104
N.D.A.

CONDUCT TO THE PREJUDICE OF GOOD
ORDER AND DISCIPLINE

Particulars:—in that he in H.M.C.S. "NONAME" on 13 July, 1950, was improperly in possession of a wrist watch bearing the initials "K.R.", the property of OSSMS K.Roe, No. 3333-H.

Second Charge
(Alternative to
First Charge)
Sec. 118
N.D.A.

LOST BY NEGLECT PUBLIC PROPERTY

Particulars:—in that he in H.M.C.S. "NONAME", between 15 June, 1950, and 30 June, 1950, through neglect lost one portable electric drill.

Third Charge
Sec. 106
N.D.A.

Signed

Captain
H.M.C.S. "NONAME"

16 July, 1950.

(C)

(106.16 TO 106.99 INCLUSIVE: NOT ALLOCATED

CHAPTER 107

INVESTIGATION AND PRELIMINARY DISPOSITION OF CHARGES

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

107.01—STATUTORY REQUIREMENT FOR INVESTIGATION OF A CHARGE

The National Defence Act provides:

“134. Where a charge is laid against a person to whom this Part applies alleging that he has committed a service offence, the charge shall forthwith be investigated in accordance with regulations made by the Governor in Council.”

(C)

NOTES

- (A) A charge is defined by article 106.01 (*Meaning of “Charge”*) and should not be confused with a mere complaint, which is an informal report that an offence has been committed.
- (B) The investigation contemplated by this Chapter is in no sense a trial. It is merely an exploratory step designed to enable service authorities to decide whether there are grounds to justify proceeding with a charge.

(M)

107.02—MODE OF INVESTIGATION OF CHARGE

- (1) An investigation of a charge should be conducted:
- (a) if the accused is an officer, by the commanding officer or a commissioned officer acting under the commanding officer's authority; and
 - (b) if the accused is not an officer, by the commanding officer or an officer or man acting under the commanding officer's authority.
- (2) The investigation of a charge may be made in such manner as seems to the person conducting the investigation to be appropriate in the circumstances.

(G)

NOTES

- (A) The requirements of (1) (b) of this article are met by the normal investigation carried out by personnel employed on Regulating duties, by the Officer of the Watch or Day, or, in the case of minor offences connected with the work of the department to which the alleged offender belongs, by an officer or man of that department.

(M)

107.03—REPORT FOLLOWING INVESTIGATION

When an investigation has been completed by any person other than the commanding officer, the results should be communicated:

- (a) if the accused is not an officer, to the Officer of the Watch or Day, or, in the case of minor offences connected with the work of the department to which the alleged offender belongs, to the Divisional Officer or the head of the department; and
- (b) if the accused is an officer, to the commanding officer.

(M)

NOTES

- (A) When the complaint goes direct to the Officer of the Watch or Day, without any preliminary investigation, the procedure normally followed before him would constitute the investigation required by this Chapter, and he may thereupon take the action prescribed in article 107.04.

(M)

107.04—PRELIMINARY DISPOSITION OF CHARGE

- (1) When a delegated officer receives the results of an investigation he shall:
 - (a) if the accused is an officer, refer the case to the commanding officer;
 - (b) if in his opinion his powers of punishment would be inadequate if the accused were found guilty, refer the case either to another delegated officer having greater powers of punishment or to the commanding officer; and
 - (c) in any other case, dismiss or proceed with the charge.
- (2) When a commanding officer receives the results of an investigation, he:
 - (a) may require a further investigation to be conducted; and
 - (b) shall, upon the completion of the investigation to his satisfaction
 - (i) cause the charge to be proceeded with, or
 - (ii) dismiss the charge if he considers that it should not be proceeded with.

(M)

NOTES

- (A) The power of a delegated officer to dismiss a charge is dependent upon his power to try the accused. If the delegated officer has no power to try the accused, either because of the rank and status of the accused or the apparent gravity of the offence, he has no power to dismiss the charge.
- (B) The commanding officer has, under Section 138 of *The National Defence Act*, power to dismiss any charge regardless of the rank or status of the accused or the gravity of the offence.
- (C) Before dismissing any charge, the officer dealing with that charge should realize that if the charge is dismissed it cannot subsequently be proceeded with, since Section 57 of *The National Defence Act* precludes a service tribunal from trying an accused upon a charge that has been dismissed.

(M)

107.05—GENERAL RULES FOR INVESTIGATION OF CHARGE

(1) An investigation into a charge shall be conducted as expeditiously as circumstances permit.

(2) Hasty and ill-considered accusations shall be discouraged.

(3) An investigation shall be so conducted as to ensure that altercations with excited or drunken men are avoided, and that a man under the influence of temper or drink is not placed in a situation likely to excite him further and to lead him into acts of violence and insubordination.

(G)

NOTES

(A) When it is decided to proceed with a charge, it is important to ensure that the accused person is brought to trial with all possible speed, since by Section 138 of *The National Defence Act* when a person is held in custody for more than eight days without a summary trial having commenced or a court martial for his trial having been ordered to assemble it is necessary to forward a report to superior authority setting forth the reasons for the delay. Under the same section, the accused will be entitled to direct a petition to the Minister, or an authority appointed by him, for release from custody when he has been held for twenty-eight days under these circumstances, and the accused must be freed if ninety days have elapsed. (See also article 105.34—“*Limitations in Respect of Custody*”).

(M)

(107.06 TO 107.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 108

SUMMARY TRIALS BY COMMANDING OFFICERS

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

Section 1—Introductory**108.01—TRIALS AUTHORIZED UNDER THIS CHAPTER**

Summary trials under this chapter shall be before:

- (a) an officer to whom a commanding officer has delegated powers of trial and punishment (*see article 108.10*), referred to in this chapter as a “delegated officer”; or
- (b) a commanding officer.

(M)

108.02—RESPONSIBILITY OF COMMANDING OFFICER FOR PUNISHMENTS

- (1) The commanding officer shall be responsible for all punishments imposed in his ship or establishment by him or by a delegated officer.
- (2) In particular, a commanding officer shall ensure that:
 - (a) no unauthorized punishment is imposed;
 - (b) the punishment imposed is appropriate to the offence charged and applicable to the offender at the time the punishment is imposed;
 - (c) no unauthorized officer or other person imposes any punishment; and
 - (d) when a minor punishment has been imposed, it is carried into effect in accordance with section 5 of this chapter.

(M)

NOTES

- (A) The powers of a commanding officer to alter or remit a punishment imposed by himself or by a delegated officer are prescribed in section ~~21~~ of chapter 114. (A 1.30)

(M)

(108.03 TO 108.09 INCLUSIVE: NOT ALLOCATED)

Section 2—Trial by Delegated Officer**108.10—DELEGATION OF COMMANDING OFFICER'S POWERS**

‘1) Subject to (3) of this article, a commanding officer may authorize any officer not below the rank of lieutenant who is serving under his command to exercise powers of trial and punishment under this section.

108.10—DELEGATION OF COMMANDING OFFICER'S POWERS—(Cont'd)

(2) An authorization under (1) of this article shall be in writing and contain the name of the delegated officer or a designation of him by reference to his appointment or the duties he performs.

(3) The classes of officers whom a commanding officer may, under this article, authorize to exercise powers of trial and punishment, and, within the limits prescribed by *The National Defence Act*, the maximum punishments they may impose, may be limited as prescribed by the Chief of the Naval Staff.

(G)

NOTES

- (A) The officers to whom these powers may be delegated, and the maximum punishments they are authorized to impose are contained in article 108.11.
- (B) A delegated officer cannot try a civilian subject to the Code of Service Discipline. The only service tribunal that can try a civilian is a court martial.
- (C) A delegated officer cannot try a charge of murder, rape or manslaughter committed in Canada. (See Section 61 of *The National Defence Act* and article 102.23).

(M)

108.11—POWERS OF PUNISHMENT OF DELEGATED OFFICERS

The classes of officers whom a commanding officer may authorize to exercise powers of trial and punishment, the maximum punishment they may impose, and the conditions under which such powers may be exercised shall be as prescribed in the Table to this article.

(C)

NOTES

- (A) When the delegated officer is trying an accused against whom there is more than one charge, he may pass one sentence only in respect of all the charges which are before him. (See *Section 122 of The National Defence Act*).
- (B) The powers of a commanding officer to alter or remit a punishment imposed by himself or by a delegated officer are prescribed in section 11 of Chapter 114.

(M)

(108.12: RESERVED FOR ARMY AND AIR FORCE)

TABLE TO ARTICLE 108.11

(A) Officer	(B) Maximum Powers if of Rank of Commander	(C) Maximum Powers if of Rank of Lieutenant-Commander or Lieutenant	Conditions
(1) The Executive Officer	(a) \$10 fine (b) 14 days Extra Work and Drill (c) 30 days Stoppage of Leave (d) 30 days Stoppage of Grog (e) 7 days Extra Work or Drill not exceeding two hours a day.	(a) 7 days Extra Work and Drill (b) 15 days Stoppage of Leave (c) 7 days Extra Work or Drill not exceeding two hours a day.	The Executive Officer may try and punish Chief Petty Officers only if he is of the rank of Commander.
(2) Officer of the Watch or Day	_____	1 day Extra Work or Drill not exceeding two hours	He may try and punish only Able Seamen and Ordinary Seamen.
(3) Heads of Departments (including Commander (Air))	(a) 3 days Stoppage of Leave (b) 3 days Extra Work or Drill not exceeding two hours a day.	(same as for Commander)	He may try and punish only men below Chief Petty Officer in the department, for offences connected with the work of the department, but not with reference to general duties of the ship.
(4) Group Commander; Squadron Commander	(same as for (3))	(same as for (3))	He may try and punish only Petty Officers and below. A Squadron Commander exercises these powers only when detached from the Group.
(5) Medical Officer, RCNH; Medical officer-in-charge, RCN Hospital Ship	(same as for (3))	(same as for (3))	He may try and punish only men below Chief Petty Officer of the medical branch, borne for duty in the Hospital or Hospital Ship.
(6) Officers in Charge of Schools	(same as for (3))	(same as for (3))	He may try and punish only men below Chief Petty Officer.
(7) First Lieutenant and Training Officer in Fleet Establishments	_____	3 days Extra Work or Drill not exceeding two hours a day	He may try and punish only Able Seamen and Ordinary Seamen.

TABLE TO ARTICLE 108.11—(Cont'd)

(A) Officer	(B) Maximum Powers if of Rank of Commander	(C) Maximum Powers if of Rank of Lieutenant-Commander or Lieutenant	Conditions
(8) Staff Officer, Naval Division	_____	(a) \$5 fine (b) 7 days Extra Work or Drill (c) 15 days Stoppage of Leave (d) 7 days Extra Work or Drill not exceeding two hours a day.	He may try and punish all men, regardless of rank, who are serving in the Naval Division as part of the permanent staff.
(9) Divisional Officer	_____	1 day Extra Work or Drill not exceeding two hours a day.	He may try and punish only Able Seamen and Ordinary Seamen within his division.

108.13—GENERAL RULES FOR CONDUCT OF TRIAL BY DELEGATED OFFICER

(1) When a delegated officer tries an accused summarily, he shall conduct the trial in the presence of the accused and:

- (a) cause Part I of the charge report to be read to the accused;
- (b) either direct that the evidence be taken on oath or inform the accused that he has the right to require that the evidence be taken on oath;
- (c) receive such evidence as he considers will assist him in determining whether
 - (i) the charge should be dismissed or the accused found not guilty, or
 - (ii) the accused should be found guilty, or
 - (iii) the accused should be remanded to the commanding officer;
- (d) hear the accused, if he desires to be heard;
- (e) call such witnesses as the accused may request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured, but nothing in this sub-paragraph shall require the procurement of the attendance of any witnesses the request for whose attendance is deemed by the delegated officer to be frivolous or vexatious;
- (f) permit the accused to put to any witness such questions as are relevant to the charge or to the conduct and character of the accused; and
- (g) if he considers that the interests of justice so require, adjourn the trial to enable further information to be obtained.

(2) A delegated officer may dismiss a charge at any stage of a trial.

(3) When, under (1) of this article, the evidence is to be taken on oath, the delegated officer shall, before the evidence of each witness is heard:

- (a) cause the witness to take the following oath: "I swear that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth. So help me God."; or
- (b) if the witness objects to taking an oath, cause him to make the following affirmation: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth".

(M)

NOTES

- (A) The charge report must be read to the accused at the outset of a summary trial. Other steps in the trial referred to in this article may be taken at any stage without reference to the order in which they are mentioned in the article.

(M)

108.14—ACTION BY DELEGATED OFFICER WHEN POWERS OF PUNISHMENT INADEQUATE

If, during a trial, a delegated officer concludes that he lacks jurisdiction, either because his powers of punishment would, if the accused were found guilty, prove inadequate, or for any other reason, he shall not pronounce a finding but shall refer the case to the commanding officer or to another delegated officer having greater powers of punishment.

(M)

NOTES

- (A) When the delegated officer has pronounced any finding or sentence at the trial, he cannot then remand the accused to the commanding officer for trial, as the accused would be entitled to plead that he had already been convicted of the offence and so could not be tried again. (See article 102.17—“*Previous Acquittal or Conviction*”).

(M)

108.15—DETERMINATION OF FINDING AND SENTENCE BY DELEGATED OFFICER

(1) When the delegated officer, after hearing the evidence, concludes that it has been proved beyond reasonable doubt that the accused committed either:

- (a) the offence with which he was charged; or
- (b) a related or less serious offence prescribed in section one hundred and twenty of *The National Defence Act* (See article 103.62—“*Conviction of Related or Less Serious Offences*”);

he shall determine what punishment should be imposed.

(2) In determining the punishment, a delegated officer shall take into consideration:

- (a) the gravity of the offence and the previous conduct of and character of the offender; and
- (b) the consequences of the finding or of the punishment.

(M)

NOTES

- (A) In determining the severity of punishment necessary for the prevention of other similar offences, the delegated officer should consider whether offences of this nature are unusually prevalent. An offence which is unusually prevalent may require more severe punishment than one which is rare.
- (B) The main consequences of punishment are shown in column K of Table A to article 108.27.

(M)

108.16—PRONOUNCEMENT OF FINDING AND SENTENCE BY DELEGATED OFFICER

(1) As soon as practical after the evidence has been received, a delegated officer shall, in the presence of the accused, pronounce the finding and, if the accused is found guilty, the sentence.

(2) If the accused is found guilty, not of the offence with which he was charged but of a related or less serious offence, the delegated officer shall inform him of the offence of which he has been found guilty.

(M)

108.17—TRIAL IN FIRST INSTANCE BY COMMANDING OFFICER

Nothing in this section shall preclude a commanding officer from trying an accused who has not previously been dealt with by a delegated officer.

(G)

(108.18 TO 108.24 INCLUSIVE: NOT ALLOCATED)**Section 3—Trial by Commanding Officer****108.25—POWER OF COMMANDING OFFICER TO TRY ACCUSED**

Section one hundred and thirty-six of *The National Defence Act* provides in part:

“136. (1) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied:

- (a) the accused person is either a subordinate officer or a man below the rank of warrant officer;
- (b) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;
- (c) the commanding officer is not precluded from trying the accused person by reason of his election, under regulations made by the Governor in Council, to be tried by court martial.” (See article 108.31—“*Election to be Tried by Court Martial*” and article 108.315—“*Action when Accused Elects to be Tried by Court Martial*”.)

(C)

NOTES

(A) Section 136(1)(d) of *The National Defence Act* prohibits a commanding officer from trying an accused person summarily if the offence is one that by regulations made by the Governor in Council the commanding officer is precluded from trying. No such regulations have in fact been made and, therefore, the commanding officer may try any offence except murder, rape or manslaughter committed in Canada (See section 61 of *The National Defence Act* and article 102.23), for which his powers of punishment are adequate.

(B) A commanding officer cannot try a civilian subject to the Code of Service Discipline. The only service tribunal that can try a civilian is a court martial.

(M)

108.26—OFFICER TO ASSIST ACCUSED

(1) When an accused is to be tried by a commanding officer, the Divisional Officer of the accused or another officer designated by or under the authority of the commanding officer shall be detailed to assist the accused.

(2) The assisting officer shall attend when the commanding officer tries the accused.

(M)

NOTES

(A) The duties of the Divisional Officer or other assisting officer during a summary trial are indicated in article 108.29 paragraph (1)(h).

(M)

108.27—POWERS OF PUNISHMENT OF A COMMANDING OFFICER

(1) When the accused is a man, the powers of punishment of a commanding officer shall be limited to the punishments and subject to the conditions prescribed in columns "A" to "J" inclusive of Table "A" to this article.

(2) When the accused is a subordinate officer, the powers of punishment of a commanding officer shall be limited to the punishments and subject to the conditions prescribed in Table "B" to this article.

(G)

NOTES

(A) The tables to this article include the restrictions on punishment contained in *The National Defence Act*, together with additional restrictions, and are a complete statement of the powers of punishment exercisable by commanding officers.

(B) A commanding officer who is of or below the rank of lieutenant has no powers of punishment when the accused is a subordinate officer.

(C) When a subordinate officer has been tried and punished summarily by the commanding officer, a copy of the charge report is forwarded through the usual channels to Naval Headquarters, to be placed on the officer's confidential file.

(M)

TABLE "A" TO ARTICLE 108.27
POWERS OF SUMMARY PUNISHMENT OF COMMANDING OFFICERS

A	B	C	D	E	F	G	H	I	J	K	L
Punishment Number	Authorized Punishment	Maximum Amount	Whether Applicable To			Punishment Warrant Required	Approval Required	Obligatory Accompanying Punishments	Optional Accompanying Punishments	Consequential Penalties	References to QRCN
			Chief Petty Officers and Petty Officers	Leading Seamen	Men below Leading Seamen						
1	Detention	90 days	Only for Mutiny or Desertion (for those who cannot be reduced in rank, see article 108.44(5))	Yes (for Badge-men, see article 108.44(5))	Yes (for Badge-men, see article 108.44(5))	Yes	Yes, except when 14 days or less imposed on able seaman or below	2, 3	4 when 14 days or less imposed, to a maximum of \$50 for leading seamen or above and \$25 for others; and 6	(a) Forfeiture of pay for period of detention. (b) Loss of all or part of time spent in detention for pension purposes, as specified in Parts I-IV and Part V of the Defence Services Pension Act. (c) Forfeiture of Long Service and Good Conduct Medal. (d) Breaking of continuity of "exemplary" conduct (see article 26.12), with resultant effect upon (i) future promotion (see article 14.02), (ii) eligibility for good conduct badges (see article 18.40), and (iii) eligibility for Long Service and Good Conduct Medal (see Naval General Orders). (e) Effect upon character assessment as prescribed in article 26.113. (f) Possible effect upon trade grouping as prescribed in article 11.115.	08.44
2	Reduction in Rank	No one may be reduced below limit prescribed in article 108.45	Yes (except those who cannot be reduced in rank)	Yes (except those who cannot be reduced in rank)	No	Yes	Yes		3, 6, 7	(a) Forfeiture of Long Service and Good Conduct Medal. (b) Breaking of continuity of "exemplary" conduct (see article 26.12), with resultant effect upon (i) future promotion (see article 14.02), (ii) eligibility for good conduct badges (see article 18.40), and (iii) eligibility for Long Service and Good Conduct Medal (see Naval General Orders). (c) Effect upon character assessment as prescribed in article 26.113. (d) Possible effect upon trade grouping as prescribed in article 11.115.	108.45

TABLE "A" TO ARTICLE 108.27—(Cont'd.)
POWERS OF SUMMARY PUNISHMENT OF COMMANDING OFFICERS

A	B	C	D	E	F	G	H	I	J	K	L
Punishment Number	Authorized Punishment	Maximum Amount	Whether Applicable To	Leading Seamen	Men below Leading Seamen	Punishment Warrant Required	Approval Required	Obligatory Accompanying Punishments	Optional Accompanying Punishments	Consequential Penalties	References to QRCN
3	Deprivation of Good Conduct Badges		Chief Petty Officers and Petty Officers	Yes	Yes	Yes	NO, except when forfeiture of LSGC Medal involved		4, 5, 6, 7, 8	(a) When two or more good conduct badges are deprived, forfeiture of Long Service and Good Conduct Medal. (b) Breaking of continuity of "exemplary" conduct (see article 26.12), with resultant effect upon (i) future promotion (see article 14.02), (ii) eligibility for good conduct badges (see article 18.40), and (iii) eligibility for Long Service and Good Conduct Medal (see Naval General Orders). (c) Effect upon character assessment as prescribed in article 26.113.	108.46
4	Fine	an amount not exceeding the man's basic pay for one month	Yes	Yes	Yes	No	No		5, 6, 7, 8	Nil	108.47
5	Extra Work and Drill	14 days	No	No	Yes	No	No		6, 7	Leave and grog stopped for period of punishment.	108.48
6	Stoppage of Leave	30 days	Yes	Yes	Yes	No	No		7	Nil	108.49
7	Stoppage of Grog	30 days (subject to increase under article 108.50)	Yes	Yes	Yes	No	No			Nil	108.50

TABLE "A" TO ARTICLE 108.27—(Cont'd.)
POWERS OF SUMMARY PUNISHMENT OF COMMANDING OFFICERS

A	B	C	D	E	F	G	H	I	J	K	L
Punishment Number	Authorized Punishment	Maximum Amount	Whether Applicable To Chief Petty Officers and Petty Officers	Leading Seamen	Men below Leading Seamen	Punishment Warrant Required	Approval Required	Obligatory Accompanying Punishments	Optional Accompanying Punishments	Consequential Penalties	References to QRCN
8	Extra work or Drill not exceeding Two Hours a day	7 days	No	No	Yes	No	No			Nil	108.51
9	Caution		Yes	Yes	Yes	No	No			Nil	108.52

(G) (PC 1954-16/923 of 24 Jun 54)

(C)

(24 Jun 54)

TABLE "B" TO ARTICLE 108.27

SUMMARY POWERS OF PUNISHMENT OF A COMMANDING OFFICER—SUBORDINATE OFFICERS

<i>Punishment</i>	<i>Maximum Amount</i>	<i>Remarks</i>
Forfeiture of Seniority	Three months	See article 104.10— "Forfeiture of Seniority"
Severe Reprimand	—	—
Reprimand	—	—
Fine	An amount not exceeding the subordinate officer's basic pay for one month.	See article 108.47—"Fine"
Caution	—	See article 108.52—"Caution".
(G)		(C) (24 Jun 54)

(108.28: RESERVED—ARMY AND AIR FORCE)

108.29—GENERAL RULES FOR TRIAL BY COMMANDING OFFICER

(1) When a commanding officer tries an accused summarily, he shall conduct the trial in the presence of the accused and:

- (a) cause Part I of the charge report to be read to the accused;
- (b) when required to do so under article 108.31, ask the accused whether he elects to be tried by court martial;
- (c) either direct that the evidence be taken on oath or inform the accused that he has the right to require that the evidence be taken on oath;
- (d) receive such evidence as he considers will assist him in determining whether
 - (i) the charge should be dismissed or the accused found not guilty, or
 - (ii) the accused should be found guilty, or
 - (iii) the accused should be remanded to higher authority;
- (e) hear the accused, if he desires to be heard;
- (f) call such witnesses as the accused may request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured, but nothing in this sub paragraph shall require the procurement of the attendance of any witnesses, the request for whose attendance is deemed by the commanding officer to be frivolous or vexatious;
- (g) permit the accused to put to any witness such questions as are relevant to the charge or the conduct and character of the accused;
- (h) ask the assisting officer, if any, to state any fact that should be brought out in the interests of the accused; and
- (i) if he considers that the interests of justice so require, adjourn the trial to enable further evidence to be given.

(2) A commanding officer may dismiss a charge at any stage of a trial.

108.29—GENERAL RULES FOR TRIAL BY COMMANDING OFFICER—(Cont'd)

(3) When, under (1) of this article, the evidence is to be taken on oath, the commanding officer shall, before the evidence of each witness is heard:

- (a) cause the witness to take the following oath: "I swear that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth. So help me God"; or
- (b) if the witness objects to taking an oath, cause him to make the following affirmation: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth".

(M)

NOTES

- (A) The charge report must be read to the accused at the outset of a summary trial and the question as to whether the evidence is to be taken on oath must be resolved before the trial proceeds. Other steps in the trial referred to in this article may be taken at any stage without reference to the order in which they are mentioned in the article; for example, the opportunity to elect, referred to in paragraph (1) (b), may be afforded at any time during the trial before the finding has been pronounced.

(M)

108.30—ACTION BY COMMANDING OFFICER WHEN POWERS OF PUNISHMENT INADEQUATE

(1) If a commanding officer concludes during a trial that his powers of punishment would, if the accused were found guilty, prove inadequate having regard to the gravity of the offence, he shall not pronounce a finding but shall:

- (a) inform the accused that an application will be made for his trial by court martial; and
- (b) adjourn the case and, as the commanding officer sees fit, direct that the accused either be kept in custody or not, pending further proceedings.

(2) When further circumstances come to the attention of the commanding officer after he has complied with (1) of this article, and those circumstances indicate that his powers of punishment will prove adequate, he may recall the accused and proceed with the summary trial; but if the application for trial by court martial has by that time been forwarded to higher authority, he shall not proceed with the summary trial without obtaining the permission of that authority.

(M)

NOTES

- (A) When the commanding officer has pronounced any finding or sentence at the trial, he cannot then remand the accused to higher authority for trial, as the accused would be entitled to plead that he had already been convicted of the offence and so could not be tried again. (*See article 102.17—"Previous Acquittal or Conviction"*).

(M)

108.31—ELECTION TO BE TRIED BY COURT MARTIAL

(1) When a commanding officer, during the trial of a chief petty officer or petty officer, concludes that if the accused were found guilty, a punishment of detention or reduction in rank would be appropriate, he shall inform the accused that he has the right to elect to be tried by court martial.

(2) The accused shall then be remanded for a period of not less than twenty-four hours to enable him to decide whether to elect to be tried by court martial.

(3) When the accused is again brought before the commanding officer, the commanding officer shall record in the charge report whether the accused elects to be tried by court martial.

(4) When the accused does not elect to be tried by court martial, the commanding officer shall proceed with the trial. In that event, the commanding officer shall cause a summary of the evidence of each witness to be made and signed by the witness. If the commanding officer subsequently decides that detention or reduction in rank is the appropriate punishment, he shall forward, with the punishment warrant, the summary of evidence on form CNS 270.

(5) If the accused elects to be tried by court martial, the commanding officer shall adjourn the case and, as the commanding officer sees fit, direct that the accused either be kept in custody or not, pending further proceedings.

(M)

NOTES

(A) The commanding officer will normally be able to determine from the charge report whether the accused has the right to elect trial by court martial. He should, therefore, in most instances take the action prescribed in (1) of this article at the beginning of the trial and before any evidence is heard. The commanding officer may, however apply this article at any time during a trial before pronouncing a finding.

(B) When the commanding officer considers that the offence, if proved, would justify reduction in rank or detention, he must not, if the accused is a petty officer or above, pronounce a finding of guilty before informing the accused of his right to elect trial by court martial. If the commanding officer in such circumstances were to pronounce a finding he would then be precluded from applying for a court martial and from imposing a sentence of detention or reduction in rank.

(C) If an accused elects trial by court martial, he may withdraw that election at any time up to forty-eight hours before the trial by court martial commences. (*See article 111.65*).

(M)

108.315—ACTION WHEN ACCUSED ELECTS TO BE TRIED BY COURT MARTIAL

(1) When, under article 108.31, an accused has elected to be tried by court martial, the commanding officer shall make application for trial by court martial in accordance with Chapter 109, forwarding the application to the convening authority through the Senior Officer present.

(2) When the Senior Officer present, having received an application for a court martial under (1) of this article, considers that the exigencies of the service do not permit a court martial to be assembled within a reasonable period, he may, if he considers it necessary,

**108.315—ACTION WHEN ACCUSED ELECTS TO BE TRIED BY COURT MARTIAL
—(Cont'd)**

return the application to the commanding officer with a direction that the commanding officer deal with the case by summary trial, and the commanding officer shall thereupon deal with the case summarily as if the accused had elected so to be tried.

(3) When, in the circumstances mentioned in (2) of this article, the commanding officer at a summary trial finds the accused guilty and imposes a punishment of detention or reduction in rank, the Senior Officer in Chief Command shall order a board of inquiry to assemble forthwith, to determine whether, having regard to the circumstances of the case, any one or more of the punishments, lower than reduction in rank in the scale of punishment set out in Table A to Article 108.27, would be adequate for the offence charged.

(4) When a board of inquiry convened under paragraph (3) recommends substitution of a reduced punishment, the Senior Officer in Chief Command shall make an order to that effect, and the substituted punishment shall have force and effect as if it had been imposed at the summary trial in the first instance.

(M)

108.32—DETERMINATION OF FINDING AND SENTENCE BY COMMANDING OFFICER

(1) When the commanding officer, after hearing the evidence, concludes that it has been proved beyond reasonable doubt that the accused committed either:

- (a) the offence with which he was charged; or
- (b) a related or less serious offence prescribed in section one hundred and twenty of *The National Defence Act* (See article 103.62—“*Conviction of Related or Less Serious Offences*”);

he shall determine what punishment should be imposed.

(2) In determining the punishment, a commanding officer shall take into consideration:

- (a) the gravity of the offence and the previous conduct and character of the offender; and
- (b) any consequences of the finding or of the punishment.

(M)

NOTES

(A) In determining the severity of punishment necessary for the prevention of other similar offences, the commanding officer should consider whether offences of this nature are unusually prevalent. An offence which is unusually prevalent may require more severe punishment than one that is rare.

(B) The main consequences of punishment are shown in column K of table A to article 108.27.

(M)

108.33—PRONOUNCEMENT OF FINDING AND SENTENCE BY COMMANDING OFFICER

(1) Except as prescribed in (3) of this article, a commanding officer shall, in the presence of the accused, as soon as practical after the evidence has been received, pronounce the finding and, if the accused is found guilty, the sentence.

(2) If the accused is found guilty, not of the offence with which he was charged but of a related or less serious offence, the commanding officer shall inform him of the offence of which he has been found guilty.

(3) When a commanding officer decides that it would be appropriate to impose a punishment designated in column G of table A to article 108.27 as one for which a punishment warrant is required, he shall:

(a) withhold pronouncement of the finding and remand the accused; and

(b) take the action prescribed in article 108.34.

(M)

108.34—PRONOUNCEMENT OF FINDING AND SENTENCE WHEN PUNISHMENT WARRANT REQUIRED

(1) When a commanding officer has withheld pronouncement of the finding under paragraph (3) of article 108.33, he shall cause a punishment warrant to be prepared in the manner prescribed in article 108.39, and, where approval of the warrant is required, seek the approval of higher authority in the manner prescribed in that section.

(2) When the punishment warrant has been prepared, and, if, applicable, the decision of higher authority has been received, the commanding officer or an officer detailed by him to perform the duty on his behalf shall read the warrant in the manner prescribed in (3) of this article.

(3) Subject to (4) of this article, the appropriate parts of punishment warrant and the section of *The National Defence Act* under which the charge was laid shall be read to the offender, on the quarter deck when practical, in the presence of the ship's company or such portion of the ship's company as the commanding officer directs.

(4) When the offender is in hospital, the warrant shall be read to him in hospital, unless the Medical Officer certifies that the offender is medically unfit to have the warrant read to him. In that event, the reading of the warrant may be carried out on the quarter deck in the absence of the offender, and the offender shall be informed of the finding and sentence as soon as his condition makes it practicable to do so.

(5) When the warrant has been read, the finding and sentence shall be deemed to have been pronounced.

(M)

NOTES

- (A) When the approving authority makes the decision described in paragraph (2)(c)(ii), (2)(e) or (2)(g) of article 108.41—"Endorsement of Punishment Warrant by Approving Authority", and the commanding officer decides to impose a punishment not requiring a punishment warrant, he cancels the warrant and proceeds with pronouncement of the finding and sentence in the manner prescribed in article 108.33.
- (B) The portions of the warrant that should normally be read under paragraph (3) are prescribed in the Notes to article 108.39.
- (C) When under paragraph (4), the warrant is read in the absence of the accused, the approximate entry should be made in Part III of the punishment warrant.
- (M)

(108.35 TO 108.38 INCLUSIVE: NOT ALLOCATED)

Section 4—Punishment Warrants and Approval of Punishments

108.39—PROCEDURE WHERE PUNISHMENT WARRANT REQUIRED

(1) When a commanding officer at a summary trial decides that it would be appropriate to impose a punishment designated in column G of table A to article 108.27 as one for which a punishment warrant is required, he shall cause a punishment warrant to be prepared.

(2) A punishment warrant should be in the following form:

'HMCS "....."

WARRANT NO. Dated 19.....

PART I

1. WHEREAS it has been represented to me that

.....
(rank) (Christian names in full) (surname) (number)

DID commit the following offence(s) against The National Defence Act, namely:

SECTION OF	STATEMENT OF	
NDA	OFFENCE	STATEMENT OF PARTICULARS

2. Therefore I did on the day of 19 personally and publicly in the presence of the accused investigate the matter. Having heard the evidence in support

AL 11

108.39—PROCEDURE WHERE PUNISHMENT WARRANT REQUIRED—(Cont'd)

of the charge(s) as well as what the accused had to offer in his defence, I consider the charge(s) to be substantiated against him, and, taking into account that this is (these are) the offence(s) registered against him on his Conduct Sheet, I adjudge him to be sentenced to:

.....
Signature of Commanding Officer
.....
Rank

PART II
(Particulars of the Offender)

- 3. (a) Date of birth.....(b) Date of enrolment.....
- (c) Date of entry in the ship.....(d) Good Conduct Medal.....
- (e) Good Conduct Badges.....
- (f) Character assessment to date, from last annual assessment, but not including this offence
- (g) Other particulars

PART III
(Used only when warrant requires approval)

- 4. (a) I submit that the following punishment should be imposed:
 - (b) True copy of Service Certificate and Conduct Sheet (and, when applicable, Form CNS 270) are attached.
 - (c) (Insert here any remarks considered necessary in support of recommended punishment).

.....
(date)
Signature of Commanding Officer
.....
Rank of Commanding Officer

108.39—PROCEDURE WHERE PUNISHMENT WARRANT REQUIRED—(Cont'd)

Endorsement of Approving Authority

5. I approve the punishment recommended

OR

I do not approve the punishment recommended but approve the punishment of. . . .

.....

OR

I do not approve the punishment recommended, and direct that the offender be sentenced to undergo such punishment as the commanding officer considers appropriate and that does not require approval.

.....
(date) (Signature, rank and appointment)

PART IV

6. Read to accused under QRCN article 108.34(3) this.....day
of19....

OR

Read in the absence of the accused under QRCN article 108.34(4) this.....
.....day of..... 19.....

.....
(Signature and rank of officer reading warrant)

(C) 1 Sep 53)

NOTES

- (A) The following instructions should be observed in completing punishment warrants:—
- (1) Figures, and abbreviations recognized by the navy, may be used throughout. For example, the date of the month, the number of good conduct badges, etc., may be designated in figures, and the officially recognized designation or code for rank, branch and trade group may be used.
 - (2) No entry should be made tentatively, e.g. in pencil. All entries should be made in final form in accordance with these instructions.
 - (3) In the heading the number and date should not be inserted until the warrant is read. Warrants are numbered consecutively:
 - (a) from the date each commanding officer assumes command of
 - (i) STADACONA,
 - (ii) SHEARWATER,
 - (iii) CORNWALLIS,
 - (iv) D'IBERVILLE, and
 - (v) NADEN; and
 - (b) from the date of commissioning of all other ships and establishments.

The date of the warrant will be the date of reading, as shown in Part IV of the warrant.

- (4) Under item 1, all offences of which the accused was found guilty should be set out, together with the particulars of each offence and the number of the section of the National Defence Act creating the offence, all as shown in the Charge Report.
- (5) Under items 3(d) and (e), a medal or badge held by the offender before the punishment was imposed should be shown. No mention is made in the warrant of any forfeiture of a medal as a consequence of punishments. Item 3(g) need not normally be completed. This space is reserved to meet possible future contingencies, and if and when these contingencies materialize, further instructions will be issued as to the completion of this item.
- (6) Throughout the warrant where it is necessary to describe the punishment imposed or proposed, the punishment alone should be stated; no extraneous matters, such as the place where the sentence is to be served, should be included.

108.39—PROCEDURE WHERE PUNISHMENT WARRANT REQUIRED—(Cont'd)**NOTES—(Cont'd)**

(7) In designating punishments proposed or imposed, all punishments whether or not they require a warrant, should be shown. Thus the main punishment and any obligatory accompanying punishment shown in column I of Table A to article 108.27 should be included, as well as any optional accompanying punishments, whether or not the latter, taken by themselves, would require a warrant. No consequential penalties should be included.

(8) When the punishment warrant does not require approval, the punishment is set out under Item 2. The commanding officer signs under item 2, and Part III of the warrant is not completed.

(9) When the punishment warrant requires approval:

(a) the proposed punishment is not inserted under item 2, and the commanding officer does not sign Part I;

(b) the commanding officer completes item 4, inserting the proposed punishment under line (a). If he considers he should explain to the approving authority the reason for any apparently abnormal leniency or severity in the proposed punishment, he should do so under line (c). Here, for example, he could refer to such matters as the prevalence of the particular offence in his ship, the domestic affairs of the offender, etc.;

(c) Item 5 is completed by the approving authority in accordance with article 108.41. The two alternatives that are inapplicable are deleted. The approving authority signs and dates the endorsement and enters the approved punishment under item 2, returning the warrant to the commanding officer; and

(d) when the warrant is returned to him, the commanding officer signs where indicated under item 2.

(10) When the warrant is read in accordance with article 108.34, Part IV will be completed and signed by the officer who reads it. Only the heading and Part I of the punishment warrant should be read.

(11) When, under article 108.31, a chief petty officer or petty officer has elected to be tried summarily and the commanding officer proposes to impose the punishment of detention or reduction in rank, Form CNS 270, containing a summary of evidence of the witnesses, is forwarded with the punishment warrant.

(M)

(1 Sep 53)

108.40—SUBMISSION FOR APPROVAL OF PUNISHMENTS

(1) Subject to (4) of this article, when a commanding officer decides that it would be appropriate to impose the punishment of detention for a term of more than 14 days or the punishment of reduction in rank, he shall:

- (a) sign, but not date, the punishment warrant; and
- (b) forward the warrant to the next superior officer, not below the rank of commodore, to whom he is responsible in matters of discipline.

(2) Subject to (3) and (4) of this article, when a commanding officer who is below the rank of commander decides that it would be appropriate to impose the punishment of detention for a term of 14 days or less, or the punishment of deprivation of good conduct badges, not involving forfeiture of a Long Service and Good Conduct Medal, he shall:

- (a) sign, but not date, the punishment warrant; and
- (b) forward the warrant to an officer of the rank of commander or above for approval.

(3) The action prescribed in (2) of this article shall not be required when:

- (a) the commanding officer is on active service by reason of an emergency; or
- (b) the commanding officer is on detached service, on shore or otherwise, for a long period.

(4) When, in the opinion of the commanding officer, circumstances are such that the procedure prescribed in (1) or (2) of this article, as applicable, is not practical, he may, in lieu of forwarding a punishment warrant, seek approval in such manner as the commanding officer considers appropriate having regard to the necessity for expeditious disposal of the charge or the interests of the accused.

(5) When the commanding officer has, under (4) of this article, sought approval without first having forwarded the punishment warrant, he shall, upon receiving the decision of the approving authority, forward the punishment warrant for written confirmation.

(M)

108.41—ENDORSEMENT OF PUNISHMENT WARRANT BY AN APPROVING AUTHORITY

(1) When a punishment warrant is received by an approving authority, he shall determine whether the punishment proposed is appropriate to the offence. In so determining, he shall have regard to the desirability of ensuring that, to the extent practical, uniformity of punishment is maintained.

(2) The approving authority may:

- (a) approve the whole punishment; or
- (b) reduce the term of any proposed punishment of detention; or
- (c) withhold approval of the whole of a proposed punishment of detention and either
 - (i) substitute reduction in rank, or
 - (ii) instruct the commanding officer to impose such punishment as the commanding officer considers appropriate that does not require approval; or

108.41—ENDORSEMENT OF PUNISHMENT WARRANT BY AN APPROVING AUTHORITY—(Cont'd)

- (d) approve a punishment of reduction in rank, but not to as low a rank as that proposed by the commanding officer; or
- (e) withhold approval of a punishment of reduction in rank and instruct the commanding officer to impose such punishment as the commanding officer considers appropriate that does not require approval; or
- (f) approve a punishment of deprivation of good conduct badges, but reduce the number of badges to be deprived; or
- (g) withhold approval of a punishment of deprivation of good conduct badges and instruct the commanding officer to impose such punishment as the commanding officer considers appropriate that does not require approval.

(3) The approving authority shall endorse on the punishment warrant his decision under (2) of this article and immediately return the warrant to the commanding officer of the offender.

(4) A punishment warrant shall be dealt with personally by the approving authority.

(M)

NOTE

(A) Punishment warrants should be dealt with by an approving authority immediately they are received and there should be no delay in returning the warrant to the commanding officer.

(M)

(108.42 AND 108.43: NOT ALLOCATED)***Section 5—Rules Respecting Punishments Imposed at Summary Trial*****108.44—DETENTION (Punishment No. 1)**

- (1) This article applies to a punishment of detention imposed at a summary trial.
- (2) Section one hundred and twenty-one of *The National Defence Act* provides in part:
“121(7)(c). In the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy . . . a sentence that includes a punishment of detention shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.”
- (3) No female person may be sentenced to detention.
- (4) Except as provided in (5), the punishment of detention may be imposed upon a chief petty officer or petty officer at a summary trial only for the offence of mutiny or desertion.
- (5) In the case of a chief petty officer or petty officer who, under chapter 14 cannot be disrated, the punishment of detention for a term of more than 14 days may be imposed for the following offences:—
 - (a) mutiny or highly insubordinate conduct;
 - (b) desertion;

108.44—DETENTION (Punishment No. 1)—(Cont'd)

- (c) indecent acts of an immoral character;
- (d) theft or fraud;
- (e) smuggling liquor into ship;
- (f) quitting the ship, boat, or working party, without leave;
- (g) drunkenness on duty;
- (h) violent assault;
- (i) aggravated cases of leave-breaking; or
- (j) flagrant contravention of security regulations.

(6) In the case of a man of the rank of leading seaman or below, who wears a good conduct badge, the punishment of detention for a term of more than 14 days shall only be imposed for the offences mentioned in (5).

- (7) The punishment of detention for a term of 14 days or less shall not be imposed upon:
- (a) a chief petty officer or petty officer; or
 - (b) a leading seaman who, under chapter 14, can be disgraced; or
 - (c) any offender who wears a good conduct badge, except when the punishment of deprivation of good conduct badges is also imposed.

(G)

NOTES

- (A) Chapter 14 prescribes the lowest rank to which offenders holding various ranks may be reduced.
- (B) The term of the punishment shall be expressed in days.
- (C) The punishment of detention for more than 14 days is normally served in a detention barracks. A term of 14 days or less is normally served in a cell on board. (*See article 114.41—"Designation of Service Prisons and Detention Barracks"*).

(M)

108.45—REDUCTION IN RANK (Punishment No. 2)

The summary punishment of reduction in rank shall not involve reduction to a rank lower than:

- (a) the "Reduction or Reversion Limit" prescribed for the offender's rank in the tables contained in chapter 14; or
- (b) the actual or equivalent rank in which the offender was first enrolled, or, in cases of re-enrolment under a fresh engagement with no continuity of service, the actual or equivalent rank in which he re-enrolled.

(M)

NOTES

- (A) When imposing a punishment of reduction in rank, a commanding officer must specify the rank to which the offender is reduced.
- (B) A man holding an acting rank may be reduced in rank in the same way as if his rank were confirmed. (*See article 101.02—"How Ranks to be Construed"*).

(M)

108.46—DEPRIVATION OF GOOD CONDUCT BADGES (Punishment No. 3)

In a punishment of deprivation of good conduct badges, the number of badges to be deprived shall be specified.

(G)

NOTE

(A) The rules governing restoration of good conduct badges deprived through punishment are prescribed in Article 18.47 (Restoration of Good Conduct Badges).

(M)

108.47—FINE (Punishment No. 4)

Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (12) A fine shall be imposed in a stated amount.....and the terms of payment of a fine shall lie within the discretion of the commanding officer of the person so punished.”

(C)

NOTES

- (A) When a commanding officer imposes a fine, the punishment must be expressed in dollars; it cannot be expressed in terms of a certain number of day's pay.
- (B) In determining the terms of payment of fines, the commanding officer should have regard to the state of the offender's pay account and, to whatever extent is practical, the financial obligations of the offender.

(M)

108.48—EXTRA WORK AND DRILL (Punishment No. 5)

- (1) A man to whom the punishment of extra work and drill is awarded shall:
- (a) except as provided in (7) of this article, turn out half an hour before hands and perform extra work during non-working hours from the time of turning out until 2100;
 - (b) perform drill or boat-pulling for one hour during the dog-watches;
 - (c) be mustered constantly, but not, unless it is for any reason considered necessary, so as to interfere with his night's rest; and
 - (d) have full time for meals except dinner, for which half an hour shall be allowed, the remainder of the dinner period being spent at work or drill.
- (2) When under (1)(b) of this article rifle drill is performed, drill order shall be worn.
- (3) When circumstances make it unpractical for drill to be carried out, extra work shall be substituted for the drill prescribed in (1) of this article.

108.48—EXTRA WORK AND DRILL (Punishment No. 5)—(Cont'd)

(4) The Officer of the Watch shall, when practical, visit the place where drill is being carried out at least once during each drill, to ensure that the drill is being carried out in strict accordance with this article.

(5) The extra work prescribed in (1) of this article, shall be performed, when practical, in the department to which the offender belongs.

(6) An offender undergoing this punishment shall not, even if the punishments of stoppage of leave (punishment No. 6) and stoppage of grog (punishment No. 7) are not specifically awarded, be permitted leave or grog during the term of his sentence.

(7) When a man who has been awarded this punishment is obliged to keep night watch either in harbour or at sea, the punishment shall cease at 2000, and the man shall not be turned out before the hands.

(8) The punishment of extra work and drill shall not be carried out on Sunday, but that day shall count toward the completion of the term of punishment.

(G)

108.49—STOPPAGE OF LEAVE (Punishment No. 6)

(1) When the punishment of stoppage of leave is awarded, the offender shall be awarded no leave whatever during the term of the sentence, unless in exceptional cases the commanding officer otherwise directs.

(2) This punishment is a stoppage of short leave only, but a man to whom it is awarded shall not be permitted to proceed on long leave while he is under the sentence.

(G)

108.50—STOPPAGE OF GROG—(Punishment No. 7)

(1) The punishment of stoppage of grog shall be awarded only for offences involving drunkenness.

(2) While the maximum term of stoppage of grog that may be imposed as a punishment is thirty days, in any case of repeated drunkenness the commanding officer may, at the expiration of the term imposed as a punishment, order the stoppage to continue for the length of time that he considers necessary, having regard to the disposition and habits of the offender.

(3) When the stoppage is extended beyond thirty days under (2) of this article, the offender shall be paid Grog Allowance at the rates prescribed in article 205.61 in respect of the days in excess of thirty days.

(G)

**108.51—EXTRA WORK OR DRILL NOT EXCEEDING TWO HOURS A DAY
(Punishment No. 8)**

(1) The rules prescribed in paragraphs (2) to (5), inclusive, of article 108.48 shall be observed in the carrying out of the punishment of extra work or drill not exceeding two hours a day.

(2) The punishment of extra work or drill not exceeding two hours a day shall not be carried out on Sunday, but that day shall count toward the completion of the term of the punishment.

(G)

NOTE

(A) The carrying out of this punishment does not involve stoppage of leave.

(M)

108.52—CAUTION (Punishment No. 9)

A caution should be imposed by the commanding officer when it is desired to give the convicted person a formal warning without other punishment.

(C)

NOTE

(A) When this punishment is imposed, the commanding officer shall decide whether or not it will be recorded on the offender's conduct sheet.

(M)

(108.53 TO 108.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 109

APPLICATION FOR DISPOSAL OF CHARGES BY HIGHER AUTHORITY

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

109.01—WHEN APPLICATION TO BE MADE TO HIGHER AUTHORITY

A commanding officer shall apply to higher authority for the disposal of a charge by court martial, unless that charge has been dismissed or unless a finding has been pronounced at a summary trial under Chapter 108 (*Summary Trials by Commanding Officer*).

(M)

109.02—PREPARATION AND DISPOSAL OF SYNOPSIS

(1) When it is proposed to apply to higher authority for disposal of a charge by court martial, a synopsis shall be prepared by the commanding officer or an officer detailed by him.

(2) A synopsis shall:

- (a) include a brief report of statements describing circumstances relating to the charge, together with the names of the persons by whom each of those statements may be substantiated in evidence;
- (b) not include any reference, direct or indirect, to
 - (i) the previous conduct or character of the accused, or
 - (ii) facts prejudicial to the accused, other than facts that bear directly on the charge, or
 - (iii) any board of inquiry, except when the charge relates to the giving of false evidence at that board of inquiry; and
- (c) be dated and signed by the officer who prepared it.

(3) When a synopsis has been completed, the commanding officer shall cause a copy, together with a copy of the charge sheet, to be delivered to the accused.

(M)

NOTES

- (A) An officer preparing a synopsis may obtain the necessary information by telephone, by a personal interview, by letter or by such other means as he sees fit having regard to the necessity of prompt and accurate preparation.
- (B) A synopsis should be in the form of the following specimen:

SYNOPSIS

Prepared in support of charge(s) against

.....
 (rank) (christian names) (surname) (number)

 (ship or establishment)

109.02—PREPARATION AND DISPOSAL OF SYNOPSIS—(Cont'd)

- 1. *LSCKI J. J. DOE, No. 5555-H*, left his wrist-watch, bearing the initials "J.J.D." in his unlocked locker in the Supply Branch Mess on board H.M.C.S. "NONAME" at approximately 1300 on Monday, 21 September, 1950. He fell asleep and, when he returned to his locker half an hour later, he could not find his watch. On Wednesday, 23 September, 1950, C2TC2 F. G. Peters, No. 6666-H, showed a wrist-watch to him which LSCKI Doe identified as his.
- 2. *OSSMS R. J. ROBINSON, No. 7777-H*, was approached by the accused at approximately 1000 on 22 September, 1950, and the accused offered to sell him a wrist-watch bearing the initilas "J.J.D."
- 3. *C2TC2 F. G. PETERS, No. 6666-H*, in consequence of receiving the information mentioned in paragraph 2, searched the kit of the accused and found a wrist-watch bearing the initials "J.J.D.". C2TC2 Peters showed it to LSCKI Doe who identified it as his missing watch.

..... (date) (Officer who prepared synopsis)

- (C) Although it is desirable that the officer preparing the synopsis obtain information directly from the persons who might be called as witnesses, it is not necessary that he do so in all cases. For example, the information obtained from OSSMS Robinson, set out in paragraph 2 of the above specimen, might have been received indirectly from another party, Robinson not being available for questioning. That procedure would be satisfactory for the purpose of the synopsis. At a trial by court martial, however, Robinson would have to be called if the prosecution should wish to introduce this evidence.
 - (D) The synopsis is not admissable at proceedings before a court martial and may not be seen by the president or any other member of the court.
- (M)

109.03—APPEARANCE OF ACCUSED BEFORE COMMANDING OFFICER

- (1) Not less than twenty-four hours after a copy of the synopsis and of the charge sheet have been delivered to the accused, he shall be brought before the commanding officer.
- (2) The commanding officer shall ask the accused whether he wishes to make a statement respecting the circumstances disclosed in the synopsis, informing him that:
 - (a) he is not obliged to make a statement;
 - (b) if he makes a statement, it will be taken down in writing and, after being signed by the accused, will be forwarded to higher authority with other material relating to the charge; and
 - (c) any written statement made by the accused under (b) of this paragraph will not be admissible as evidence at any trial.
- (3) Any statement made by the accused under (2) of this article:
 - (a) shall be a separate document not forming part of the synopsis; and
 - (b) shall not be admissible as evidence at any trial.

(M)

NOTES

- (A) When an accused is brought before a commanding officer under this article, his appearance is not part of a summary trial.
- (B) A statement by an accused under (2) of this article must be taken down word-for-word in the presence of the accused and should not be made under oath.

(M)

109.04—FORWARDING OF APPLICATION FOR COURT MARTIAL

(1) When a commanding officer applies to higher authority for the disposal of a charge by court martial, he shall forward the application direct to the next superior officer who has power to convene a court martial.

(2) An application under (1) of this article shall be in the form of a letter and shall be accompanied by:

- (a) the synopsis (*see article 109.02*);
- (b) the charge sheet (*see Chapter 106, Section 3*);
- (c) the statement, if any, of the accused (*see article 109.03*);
- (d) if the accused is an officer
 - (i) a certified copy of any entry previously made against the accused in the log of the ship or fleet establishment to which he belonged when the alleged offence was committed,
 - (ii) certified copies of any other documents in the nature of a definite censure by superior authority for anything done by the accused while he served in the ship or fleet establishment to which he belonged when the alleged offence was committed;
- (e) if the accused is a man
 - (i) a certified extract of all entries of offences and punishments recorded on the conduct sheet of the accused prior to the date of the alleged commission of the offence and subsequent to the date when the accused joined the ship or fleet establishment to which he belonged when the alleged offence was committed,
 - (ii) a character assessment for the period from the date of the last regular assessment to the date of commission of the alleged offence, the assessment being made without taking into account the alleged offence,
 - (iii) a certified copy of the certificate of service of the accused.

(3) If no statement of the accused accompanies the application, the commanding officer shall, in the letter of application, confirm that (1) and (2) of article 109.03 were complied with and that the accused did not wish to make a statement.

(M)

109.05—ACTION ON RECEIPT OF APPLICATION FOR COURT MARTIAL

(1) When an officer who receives an application forwarded under article 109.04 (*Forwarding of Application for Court Martial*) considers that the charge should not be proceeded with, either because there does not appear to be sufficient evidence to justify the accused being tried or for any other reason, he shall dismiss the charge and cause the accused to be informed of the dismissal.

(2) When the officer described in (1) of this article considers that the charge should be proceeded with, he shall:

- (a) convene a court martial; or

**109.05—ACTION ON RECEIPT OF APPLICATION FOR COURT MARTIAL
—(Cont'd)**

- (b) if the accused is a man, return the case to the commanding officer with directions to proceed with a summary trial, unless the accused has elected to be tried by court martial and the exigencies of the service permit a court martial to be assembled within a reasonable period.

(M)

NOTES

- (A) If the convening authority considers that information additional to that contained in the synopsis is necessary before he can decide whether the charge should be proceeded with, he may cause a board of inquiry to be assembled.

(M)

(109.06 TO 109.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 110

SUMMARY TRIAL BY SUPERIOR COMMANDER

(Reserved for Army and Air Force)

CHAPTER 111

CONVENING AND POWERS OF COURTS MARTIAL

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

*Section 1 — Application of Chapter***111.01—APPLICATION OF CHAPTER**

This chapter shall apply to:

- (a) General Courts Martial;
 - (b) Disciplinary Courts Martial; and
 - (c) Special General Courts Martial to the extent provided in chapter 113.
- (G) (P.C. 1956-606 of 19 Apr 56) (19 Apr 56)

(111.02 TO 111.04 INCLUSIVE: NOT ALLOCATED)

*Section 2—Convening of Courts Martial***111.05—WHO MAY CONVENE COURTS MARTIAL**

The following persons may convene a court martial:

- (a) the Minister;
 - (b) the Chief of the Naval Staff;
 - (c) a senior officer in chief command, upon receipt of an application from a commanding officer under his command; and
 - (d) such other service authorities as the Minister may prescribe or appoint for that purpose.
- (M)

NOTES

- (A) The power of the Minister to convene courts martial and to appoint other authorities to do so is a statutory power prescribed by Section 138(1) of *The National Defence Act*.
- (B) If the convening authority considers that information not contained in the synopsis is necessary before he can decide whether to convene a court martial, he may cause a board of inquiry to be convened.

(M)

111.06—CONVENING ORDER

(1) Every convening order shall contain:

- (a) a statement as to whether the court martial to be convened shall be a General Court Martial or a Disciplinary Court Martial;
- (b) either
 - (i) the rank and name of the president, or
 - (ii) a designation of the authority to appoint a president; and
- (c) in respect of each other member of the court martial, either
 - (i) his rank and name, or
 - (ii) the designation of the ship or establishment from which he is to be detailed together with the rank which he shall hold.

111.06—CONVENING ORDER—(Cont'd)

(2) A convening order should be in the following form:

ORDER FOR A.....COURT MARTIAL
(General or Disciplinary)

The officers mentioned below shall assemble on board.....
on the.....day of.....19...., for the purpose of trying
by a.....Court Martial
(General or Disciplinary)

.....
(rank) (Christian names) (surname) (number)
and such other person or persons as may be brought before them.

President

.....
(rank, name and ship or establishment of the president); or
("to be an officer appointed by.....").

Other Members

.....
.....
.....
.....
.....
(rank, name and ship or establishment of each other member); or
(".....officers of the rank of.....to be appointed
by the commanding officer of.....")

Alternates

.....
.....
(rank, name and ship or establishment); or
(".....officers of the rank of
.....to be appointed from
.....")
(ship or establishment)

111.06—CONVENING ORDER—(Cont'd)*Judge Advocate*

.....
 A judge advocate (rank and name of the judge advocate); **or**
 need not be de- ("to be appointed by the Judge Advocate General")
 tailed for Disciplinary Courts Mar-
 tial

Signed this day of 19....

.....
 (rank and name of convening authority)

.....
 (appointment of convening authority)

(M)

NOTES

- (A) In selecting the president and other members of a court martial, the convening authority should nominate the most suitable officers available, irrespective of the branch to which they belong. The president should always be an officer of the Executive Branch, and a majority of the members, including the president, should also be Executive officers.
- (B) The convening authority should when practical select the president and members from among different ships and establishments and should not, unless the exigencies of the service so require, select the president or a majority of the members from the ship or establishment to which the accused belonged when the alleged offence was committed.
- (C) The requirement that the president of a General Court Martial and of a Disciplinary Court Martial shall be appointed by the officer convening the court martial or by an officer empowered by him to appoint the president is a statutory requirement prescribed in Sections 140(2) and 146(1) of *The National Defence Act*.

(M)

111.07—SIGNATURE ON CHARGE SHEET

For the purposes of identification, the convening authority shall sign the charge sheet that is sent to the president.

(M)

(111.08 TO 111.15 INCLUSIVE: NOT ALLOCATED)***Section 3—General Courts Martial*****111.16—JURISDICTION OF GENERAL COURT MARTIAL**

The National Defence Act provides:

"139. A General Court Martial may try any person who under Part IV (*Disciplinary Jurisdiction of the Services*) is liable to be charged, dealt with and tried upon a charge of having committed any service offence."

(C)

111.16—JURISDICTION OF GENERAL COURT MARTIAL—(Cont'd)

NOTES

(A) For the provisions of Part IV and regulations thereunder, see *Chapter 102—"Disciplinary Jurisdiction"*.

(M)

111.17—LIMITATIONS OF POWERS OF PUNISHMENT OF GENERAL COURT MARTIAL

No General Court Martial shall pass a sentence that includes:

- (a) the punishment of forfeiture of service toward progressive increase in pay; or
- (b) a minor punishment.

(G)

NOTES

(A) For the limitations applicable to each type of punishment, see Chapter 104 (*Punishments and Sentences, Articles 104.02 to 104.12 inclusive*).

(M)

111.18—NUMBER OF MEMBERS OF GENERAL COURT MARTIAL

(1) Section one hundred and forty of *The National Defence Act* provides in part:

"140. (1) A General Court Martial shall consist of not less than five officers and not more than such maximum number of officers as may be prescribed in regulations."

(2) No General Court Martial shall consist of more than nine officers.

(3) At least two officers should be detailed as alternates for each General Court Martial.

(M)

NOTE

(A) Normally it should not be necessary to detail more than five members and two alternates for a General Court Martial.

(M)

111.19—ELIGIBILITY TO SERVE ON GENERAL COURTS MARTIAL

Section one hundred and thirty-eight of *The National Defence Act* provides in part:

"138. (2) An authority who convenes a court martial under subsection one may appoint as members of the court martial, officers of the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force or officers of any navy, army or air force, who are attached, seconded or loaned to the Canadian Forces."

(C)

111.20—INELIGIBILITY TO SERVE ON GENERAL COURT MARTIAL

The National Defence Act provides:

"142. None of the following persons shall sit as a member of a General Court Martial,

- (a) the officer who convened the court martial;
- (b) the prosecutor;
- (c) a witness for the prosecution;
- (d) the commanding officer of the accused person;
- (e) a provost officer;
- (f) an officer who is under the age of twenty-one years;
- (g) an officer below the naval rank of lieutenant, the army rank of captain or the air force rank of flight lieutenant; or
- (h) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded."

(C)

111.21—RANK OF PRESIDENT AND MEMBERS OF GENERAL COURT MARTIAL

Section one hundred and forty of *The National Defence Act* provides in part:

"140. (2) The President of a General Court Martial shall be an officer of or above the naval rank of captain or of or above the rank of colonel or group captain

(3) Where the accused person is of or above the rank of commodore, brigadier or air commodore, the president of a General Court Martial shall be an officer of or above the rank of the accused person, and the other members of the court martial shall be of or above the naval rank of captain or of or above the rank of colonel or group captain.

(4) Where the accused person is of the naval rank of captain or of the rank of colonel or group captain, all of the members of a General Court Martial, other than the president, shall be of or above the rank of a commander, lieutenant-colonel or wing commander.

(5) Where the accused person is a commander, lieutenant-colonel or wing commander, at least two of the members of a General Court Martial, exclusive of the president, shall be of or above the rank of the accused person."

(C)

NOTE

(A) The convening authority should not normally appoint as a member of the General Court Martial an officer of a rank lower than the rank held by the accused.

(M)

111.22—APPOINTMENT OF JUDGE ADVOCATE AT GENERAL COURT MARTIAL

(1) *The National Defence Act* provides:

"141. Such authority as is prescribed for that purpose in regulations shall appoint a person to officiate as judge advocate at a General Court Martial."

**111.22—APPOINTMENT OF JUDGE ADVOCATE AT GENERAL COURT MARTIAL
—(Cont'd)**

- (2) A judge advocate for a General Court Martial shall be appointed
- (a) by the convening authority; or
 - (b) if the convening authority does not appoint the judge advocate, by the Judge Advocate General.
- (M)

111.23—APPOINTMENT OF PROSECUTOR FOR GENERAL COURT MARTIAL

- (1) A prosecutor shall be appointed for each General Court Martial. He shall, subject to (2) of this article, be a commissioned officer:
- (a) appointed by name by the convening authority; or
 - (b) appointed by an officer designated by the convening authority to do so.
- (2) The convening authority may, with the concurrence of the Judge Advocate General, appoint counsel to act as prosecutor.
- (M)

NOTE

- (A) While the commanding officer of the accused person is eligible for nomination as prosecutor, the choice of prosecutor should be governed by consideration of the competence of the selected officer to undertake the prosecution, having regard to the nature of the charges.

(M)

(111.24— TO 111.34 INCLUSIVE: NOT ALLOCATED)***Section 4—Disciplinary Courts Martial*****111.35—JURISDICTION OF DISCIPLINARY COURTS MARTIAL**

- (1) *The National Defence Act* provides:
- “143. Subject to any limitations prescribed in regulations made by the Governor in Council, a Disciplinary Court Martial may try any person who under Part IV (*Disciplinary Jurisdiction of the Services*) is liable to be charged, dealt with and tried upon a charge of having committed any service offence.”
- (2) No Disciplinary Court Martial shall try an officer of or above the rank of lieutenant-commander.
- (G)

NOTE

- (A) The only regulations limiting the authority of a Disciplinary Court Martial are contained in this article and in article 111.36.

(M)

111.36—LIMITATION OF POWERS OF PUNISHMENT OF DISCIPLINARY COURT MARTIAL

No Disciplinary Court Martial shall pass a sentence that includes:

- (a) a punishment higher in the scale of punishments (see article 104.02) than imprisonment for less than two years; or
- (b) the punishment of forfeiture of service towards progressive increase in pay; or
- (c) a minor punishment.

(G)

111.37—NUMBER OF MEMBERS OF DISCIPLINARY COURT MARTIAL

(1) *The National Defence Act* provides:

“145. A Disciplinary Court Martial shall consist of not less than three officers and not more than such maximum number of officers as may be prescribed in regulations.”

(2) No Disciplinary Court Martial shall consist of more than five officers.

(3) At least two officers should be detailed as alternates for each Disciplinary Court Martial.

(M)

NOTE

(A) Normally it should not be necessary to detail more than three members and two alternates for a Disciplinary Court Martial.

(M)

111.38—ELIGIBILITY TO SERVE ON DISCIPLINARY COURTS MARTIAL

Section one hundred and thirty-eight of *The National Defence Act* provides in part:

“138. (2) An authority who convenes a court martial under subsection one may appoint as members of the court martial, officers of the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force or Officers of any navy, army or air force, who are attached, seconded or loaned to the Canadian Forces.”

(C)

111.39—INELIGIBILITY TO SERVE ON DISCIPLINARY COURT MARTIAL

(1) *The National Defence Act* provides:

“148. None of the following persons shall sit as a member of a Disciplinary Court Martial,

- (a) the officer who convened the court martial;
- (b) the prosecutor;
- (c) a witness for the prosecution;

**111.39—INELIGIBILITY TO SERVE ON DISCIPLINARY COURT MARTIAL
—(Cont'd)**

- (d) the commanding officer of the accused person;
- (e) a provost officer;
- (f) an officer who is under the age of twenty-one years; or
- (g) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded."

(2) No subordinate officer shall sit as a member of a Disciplinary Court Martial.

(M)

111.40—RANK OF PRESIDENT OF DISCIPLINARY COURT MARTIAL

The president of a Disciplinary Court Martial shall be an officer of or above the rank of commander.

(M)

NOTE

- (A) The National Defence Act provides in Section 146(2) that the president of a Disciplinary Court Martial shall be of the rank of lieutenant-commander or of or above such higher rank as may be prescribed in regulations. The higher rank of commander is prescribed in this article.

(M)

111.41—APPOINTMENT OF JUDGE ADVOCATE FOR DISCIPLINARY COURT MARTIAL

(1) *The National Defence Act* provides:

"147. Such authority as may be prescribed for that purpose in regulations may appoint a person to officiate as judge advocate at a Disciplinary Court Martial."

(2) A judge advocate may be appointed for a Disciplinary Court Martial:

- (a) by the convening authority; or
- (b) if the convening authority desires a judge advocate to be appointed but is unable to appoint a suitably qualified person, by the Judge Advocate General.

(M)

111.42—APPOINTMENT OF PROSECUTOR FOR DISCIPLINARY COURT MARTIAL

(1) A prosecutor shall be appointed for each Disciplinary Court Martial. He shall, subject to (2) of this article, be a commissioned officer:

- (a) appointed by name by the convening authority; or
- (b) appointed by an officer designated by the convening authority to do so.

(2) The convening authority may, with the concurrence of the Judge Advocate General, appoint counsel to act as prosecutor.

(M)

NOTE

- (A) While the commanding officer of the accused person is eligible for nomination as prosecutor, the choice of prosecutor should be governed by consideration of the competence of the selected officer to undertake the prosecution, having regard to the nature of the charges.

(M)

(111.43 TO 111.49 INCLUSIVE: NOT ALLOCATED)

*Section 5—Forwarding of Documents***111.50—FORWARDING OF DOCUMENTS BY CONVENING AUTHORITY**

When a convening authority has issued a convening order for a court martial, he shall forward:

- (a) to the president
 - (i) the convening order, and
 - (ii) the charge sheet;
- (b) to the judge advocate, if any,
 - (i) a copy of the convening order,
 - (ii) a copy of the charge sheet, and
 - (iii) a copy of the synopsis;
- (c) to the prosecutor
 - (i) a copy of the convening order,
 - (ii) a copy of the charge sheet,
 - (iii) a copy of the synopsis, and
 - (iv) the documents mentioned in paragraph (2)(d) or (2)(e), as applicable, of article 109.04 (*“Forwarding of Application for Court Martial”*); and
- (d) to the commanding officer of the ship or establishment where the accused is present
 - (i) a copy of the convening order,
 - (ii) a copy of the charge sheet,
 - (iii) a copy of the synopsis, and
 - (iv) information as to whether the prosecutor is a person having legal qualifications.

(M)

111.51—TRANSMISSION OF DOCUMENTS TO ACCUSED

The commanding officer of the ship or establishment where the accused is present shall ensure that there is handed to the accused at least twenty-four hours before the commencement of his trial:

- (a) a copy of the convening order;
- (b) a copy of the charge sheet;
- (c) a copy of the synopsis; and
- (d) a written notification as to whether the prosecutor is a person having legal qualifications.

(M)

111.52—RECEIPT FOR DOCUMENTS BY ACCUSED

(1) When the documents prescribed in article 111.51 have been handed to the accused, he shall be required to complete a receipt for the documents. The receipt shall include:

- (a) a list of the documents received by the accused; and
- (b) the date and time at which the documents were received by him.

(2) The receipt should be in the following form:

Receipt for Documents Transmitted to Accused

I hereby acknowledge that at.....(time) on the.....day of.....19..., I did receive the following documents appertaining to my trial by court martial:

- copy of the convening order
- copy of the charge sheet
- copy of the synopsis
- a written notification as to whether the prosecutor is a person having legal qualifications.

Signed this.....day of.....19...

WITNESS

.....

.....

(rank, name of accused and number)

(3) If the accused refuses to sign the receipt prescribed in this article, the person handing the documents to him shall make an endorsement to that effect on the form of receipt and shall state in that endorsement the date and time at which he delivered the documents listed in the receipt.

(M)

111.53—FORM AND SERVICE OF STATUTORY DECLARATIONS

(1) When the prosecutor or accused wishes to introduce at a court martial a declaration referred to in subsection two of section one hundred and fifty-three of *The National Defence Act* (see article 112.72—"Statutory Declarations"), it shall be prepared in the following form:

STATUTORY DECLARATION

Dominion of Canada
Province of

IN THE MATTER OF a court martial convened
for the trial of

(if taken elsewhere,
describe place)

.....
(name of the accused)

To Wit:

I,do solemnly
(name of person making declaration)

declare that:

(particulars of evidence set
out in numbered paragraphs)

111.53—FORM AND SERVICE OF STATUTORY DECLARATIONS—(Cont'd)

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

DECLARED before me at
this day of 19 .

.....
(signature of person before
whom declaration made)

.....
(signature of person
making declaration)

.....
(his appointment)

(2) A declaration under (1) of this article may be made before any judge, notary public, justice of the peace, police or stipendiary magistrate, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or dominion courts, or any other functionary authorized by law to administer an oath in any manner.

(3) A declaration made under this article may be served, by the party seeking to introduce it, directly upon the other party, or may be delivered to the commanding officer of the other party for service by him upon the other party.

(M)

(20 May 52)

NOTES

- (A) When the requirements of Section 153(2) of *The National Defence Act* as to length of notice cannot be complied with unless the trial is postponed, the prosecutor or accused, as the case may be, may request the convening authority to postpone the trial.
- (B) For the conditions governing the admissibility of statutory declarations see article 112.72.
- (C) The person making a statutory declaration must himself appear before one of the authorities prescribed in (2) of this article, and it must be established to the satisfaction of that authority that the person making the declaration does in fact declare it to be true and that he is fully aware of the contents of the declaration.

(M)

(111.54 TO 111.59 INCLUSIVE: NOT ALLOCATED)

Section 6—Preparation for Trial**111.60—DEFENDING OFFICER, COUNSEL AND ADVISER**

(1) Every accused shall, if he so desires, be entitled to have at a court martial:

- (a) a defending officer counsel; and
- (b) an adviser.

111.60—DEFENDING OFFICER, COUNSEL AND ADVISER—(Cont'd)

(2) A defending officer may be any commissioned officer of Her Majesty's Forces; counsel may be any barrister or advocate in good standing; and an adviser may be any person, irrespective of his status or rank.

(3) The person who transmits to the accused the documents prescribed in article 111.51 shall inquire of the accused whether he:

- (a) desires a defending officer to represent him;
- (b) intends to retain counsel; or
- (c) desires to conduct his defence himself without the assistance of a defending officer or counsel.

(4) When the accused states that he desires to have a defending officer appointed to represent him, the person transmitting the documents to the accused shall ascertain whether he desires a particular defending officer or whether he is willing to accept any defending officer who may be detailed to represent him.

(5) The person transmitting the documents to the accused shall inform the commanding officer of the ship or establishment where the accused then is as to the wishes of the accused under (4) of this article. If the accused has requested the services of a particular officer as defending officer, the commanding officer shall endeavour to have him available for that purpose. If a particular officer asked for by the accused is not available, or if the accused has requested that a defending officer be appointed but has not named a particular officer, the commanding officer shall ensure that a suitable officer is appointed.

(6) The accused shall be responsible for:

- (a) retaining counsel instead of a defending officer; and
- (b) obtaining an adviser.

(M)

NOTES

- (A) The function of an adviser is to assist an accused, both before and during trial, in respect of any technical or specialized aspect of the case. Under Chapter 112, he is not permitted to take any part in the proceedings before the court except that he may address the court in mitigation of punishment. He may be of any rank or may be a civilian.
- (B) The accused may in certain circumstances retain counsel through the Department of National Defence with financial assistance provided by the Crown. For the provisions relating to this see Appendix XV.

111.61—PREPARATION OF DEFENCE BY ACCUSED

When a court martial has been convened, the commanding officer shall ensure that the accused is afforded full opportunity to prepare his defence and of free and private communication with his defending officer or counsel, his adviser, and if he has no defending officer or counsel, with his witnesses.

(M)

111.62—DUTY TO PROCURE WITNESSES

The National Defence Act provides:

“154. (1) The commanding officer of the accused person, the authority who convenes a court martial, or, after the assembly of the court martial, the president shall take all necessary action to procure the attendance of the witnesses whom the prosecutor and the accused person request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured, but nothing in this subsection shall require the procurement of the attendance of any witnesses, the request for whose attendance is deemed by any such commanding officer, authority who convenes a court martial or president to be frivolous or vexatious.

(2) Where a request by the accused person for the attendance of a witness is deemed to be frivolous or vexatious, the attendance of that witness, if his attendance, having regard to the exigencies of the service, can reasonably be procured, shall be procured if the accused person pays in advance the fees and expenses of the witness at the rates prescribed in regulations, and if at the trial the evidence of the witness proves to be relevant and material, the president of the court martial or the authority who convened the court martial shall order that the accused person be reimbursed in the amount of the fees and expenses of the witness so paid.

(3) Nothing in this section shall limit the right of the accused person to procure and produce at the trial at his own expense such witnesses as he may desire, if the exigencies of the service permit.”

(C)

111.63—METHOD OF PROCURING WITNESSES

Section two hundred of *The National Defence Act* provides in part:

“200. (1) For the purposes of this section, “court martial”, in addition to the tribunals mentioned in paragraph (g) of section two, includes a commissioner taking evidence under this Act and an officer taking a summary of evidence in accordance with regulations; and references in this section to the president or members of a court martial shall be deemed to include references to any such commissioner or officer.

(2) Every person required to give evidence before a court martial may be summoned under the hand of the authority by whom the court martial was convened, established or appointed, or the Judge Advocate General, or under the hand of the president, judge advocate, commissioner taking evidence under this Act or officer taking a summary of evidence in accordance with regulations.

(3) A person summoned under subsection two may be required to bring with him and produce at a court martial any documents in his possession or under his control relating to the matters in issue before the court martial.

(4) A witness summoned or attending to give evidence before a court martial shall be paid such witness fees and allowances for expenses of attendance as are prescribed in regulations.”

(C)

NOTES

(A) This provision is designed primarily to compel the attendance of civilian witnesses. In most cases service witnesses will merely be ordered to attend.

(M)

111.64—ACCUSED TO BE INFORMED OF PROSECUTION WITNESSES

(1) The prosecutor should, before a trial by court martial commences, notify the accused of any witness whom he proposes to call and the nature of whose evidence is not indicated in the synopsis, and furnish the accused with a written statement of the substance of the proposed evidence of that witness.

(2) If a witness is called by the prosecutor and no indication of the nature of the evidence of that witness appears in the synopsis, the accused shall have the right to an adjournment after the evidence of the witness has been given unless the prosecutor has complied with (1) of this article.

(M)

111.65—WITHDRAWAL OF ELECTION TO BE TRIED BY COURT MARTIAL

(1) When an accused has elected to be tried by court martial under article 108.31 (*"Election to be Tried by Court Martial"*), he may withdraw that election at any time prior to forty-eight hours before the commencement of his trial.

(2) When an election has been withdrawn under (1) of this article the commanding officer shall:

(a) proceed with a summary trial of the accused without extending to the accused a further right of election; or

(b) dismiss the charge.

(M)

(111.66 TO 111.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 112

**TRIAL PROCEDURE AT GENERAL AND DISCIPLINARY
COURTS MARTIAL**

*(Refer carefully to article 1.02 (Definitions) when reading every regulation
in this chapter.)*

Section 1 — Introductory**112.01—APPLICATION OF CHAPTER**

This chapter shall apply to:

- (a) General Courts Martial;
- (b) Disciplinary Courts Martial; and
- (c) Special General Courts Martial to the extent provided in chapter 113.

(G) (PC 1956-606 of 19 Apr 56)

(19 Apr 56)

112.02—MEANING OF “ACCUSED” AND “EXAMINATION”

In this chapter unless the context otherwise requires:

- (a) “accused” means the accused personally or counsel or defending officer acting on behalf of the accused, but does not include an adviser acting on behalf of the accused; and
- (b) “examination” means examination-in-chief, cross-examination, re-examination and questioning by the court.

(M)

112.03—INQUIRY AS TO DISQUALIFICATION OF MEMBERS

The president shall, before the trial commences, ascertain whether any member of the court is disqualified to sit, having regard to article 111.20 (Ineligibility to Serve on General Court Martial) or article 111.39 (Ineligibility to Serve on Disciplinary Court Martial).

(M)

(112.04—NOT ALLOCATED)**Section 2 — Order of Procedure****112.05—PROCEDURE TO BE FOLLOWED AT A COURT MARTIAL**

(1) Except in respect of questions of law where there is a judge advocate (*see article 112.06—“Questions of Law where Judge Advocate Appointed”*) the procedure at a court martial shall be in the order set out in this article. (1 Mar 56)

(2) At the beginning of a trial:

- (a) the court shall assemble;
- (b) the prosecutor and the representatives and the adviser, if any, of the accused shall take their places;

112.05—PROCEDURE TO BE FOLLOWED AT A COURT MARTIAL—(Cont'd)

- (c) the accused shall be brought before the court;
 - (d) unless the trial is to be held in camera (*see article 112.10—“Who May be Present at a Court Martial”*), members of the public shall be admitted.
- (3) When (2) of this article has been complied with:
- (a) the judge advocate or, if there is no judge advocate, the president shall read to the accused the convening order, and inform him of the names of those officers by whom it is proposed that he should be tried;
 - (b) if a court martial is held outside Canada, the judge advocate or, if there is no judge advocate, the president shall, in order to establish the rules of evidence to be applied, ask the accused to state in what province his ordinary place of residence is situated (*see article 112.68—“Provincial Law to be Applied”*); and
 - (c) the judge advocate or, if there is no judge advocate, the president shall ask the accused whether he objects to be tried by any of the officers whose names have been read, and if he does object, the procedure described in article 112.14 (Objections to President or Other Members) shall be followed.
- (4) After any objection to the members of the court has been disposed of:
- (a) the judge advocate or, if there is no judge advocate, the president shall swear the members of the court and, if there is no judge advocate, the president shall be sworn by any member of the court already sworn (*see article 112.15—“Oath to be Taken by Members”*);
 - (b) the president shall swear the judge advocate, if any, (*see article 112.16—“Oath to be Taken by Judge Advocate”*);
 - (c) the judge advocate or, if there is no judge advocate, the president shall swear the reporter, if any (*see article 112.17—“Oath to be Taken by Reporter”*);
 - (d) if it is proposed to have an interpreter, the judge advocate or, if there is no judge advocate, the president shall ask the accused whether he objects to the interpreter, and if he does object, the procedure described in article 112.18 (Objection to Interpreter) shall be followed; and
 - (e) the judge advocate or, if there is no judge advocate, the president shall swear the interpreter, if any (*see article 112.19—“Oath to be Taken by Interpreter”*).
- (5) After the oaths prescribed in (4) of this article have been taken:
- (a) the judge advocate or, if there is no judge advocate, the president shall read the charge sheet to the accused;
 - (b) the accused may apply for an adjournment on the ground that he is unable properly to prepare his defence because the particulars of the charge are inadequate or are not set out with sufficient clarity (*see article 112.22—“Action When Particulars Deficient”*);
 - (c) the accused may object to the trial being proceeded with (*see article 112.24—“Plea in Bar of Trial”*);

112.05—PROCEDURE TO BE FOLLOWED AT A COURT MARTIAL—(Cont'd)

- (d) when a charge sheet contains more than one charge, the accused may apply to be tried separately in respect of any charge or charges in that charge sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and, if he so applies, the court may, if it considers the interests of justice so require, proceed with separate trials as applied for by the accused, and direct the order in which those trials shall be held;
 - (e) the judge advocate or, if there is no judge advocate, the president shall ask the accused to plead guilty or not guilty to each charge; and
 - (f) if the accused refuses to plead, he shall be deemed to have pleaded not guilty.
- (6) After the accused has pleaded:
- (a) if he has pleaded guilty to any charge, the procedure prescribed in article 112.25 (*Acceptance of Plea of Guilty*) shall be followed before that plea is accepted and recorded;
 - (b) if offences have been charged in the alternative, and a plea of guilty has been accepted under article 112.25 to one of the alternative charges, the president shall direct that consideration of the other alternative charges be withheld until a sentence has been passed;
 - (c) if a plea of guilty has been accepted for all charges before the court, the procedure prescribed in article 112.27 (*Procedure on Plea of Guilty*) shall be followed;
 - (d) if the accused has pleaded not guilty to any charge before the court, the trial of that charge shall be proceeded with as prescribed in this article;
 - (e) if a plea of guilty has been accepted for some of the charges before the court and the accused has pleaded not guilty to another charge or charges, the trial of those charges to which he has pleaded not guilty shall be proceeded with before proceeding on those charges to which a plea of guilty has been accepted.
- (7) Following any action required by (6) of this article, the judge advocate or, if there is no judge advocate, the president shall ask the accused whether, on the ground that he has not had sufficient time to prepare his defence, he applies for an adjournment, and, if the accused does so, the procedure prescribed in article 112.62 (*Adjournment of Court*) shall be followed. If an application is allowed the president shall adjourn the court.
- (8) After the accused has been given an opportunity to request an adjournment:
- (a) if the judge advocate so requests, the prosecutor shall make an opening address (*See article 112.23—"Opening Address by Prosecutor"*);
 - (b) the prosecutor shall in such order as he sees fit, call the witnesses for the prosecution, who shall be sworn by the judge advocate or, if there is no judge advocate, by the president (*See article 112.20—"Oath to be Taken by Witnesses"*) and they shall be examined by the prosecutor (*See article 112.31—"Examination of Witnesses"*);
 - (c) the accused may cross-examine or apply for permission to postpone the cross-examination of each of the witnesses for the prosecution (*See article 112.31*);
 - (d) the prosecutor may, if a witness for the prosecution has been cross-examined, re-examine that witness (*See article 112.33—"Re-Examination of Witnesses"*);

112.05—PROCEDURE TO BE FOLLOWED AT A COURT MARTIAL—(Cont'd)

- (e) the president may, on behalf of the court, put further questions to a witness for the prosecution either during or at the conclusion of the examination prescribed in (b), (c) and (d) of this paragraph, but should normally put any questions following the conclusion of the re-examination of the witness; and
 - (f) if a witness has been questioned under (e) of this paragraph, the president may, if he thinks fit, put such further questions to the witness as the prosecutor or the accused may request.
- (9) When the examination of all witnesses for the prosecution has been completed, the prosecutor shall inform the court that the case for the prosecution is closed.
- (10) When the case for the prosecution is closed, the court may, of its own motion or upon the motion of the accused, hear arguments first by the accused and then by the prosecutor, together with any reply by the accused, as to whether a *prima facie* case has been made out against the accused, and:
- (a) the judge advocate may, if he so desires, and shall if the president so requests, explain the law applicable as to whether a *prima facie* case has been established;
 - (b) the court shall then close to decide whether the evidence heard during the case for the prosecution has established to the satisfaction of the court, in the absence of evidence to the contrary, the essential ingredients of the offence; and
 - (c) the court shall re-open when it has arrived at its decision and
 - (i) if it has decided that no *prima facie* case has been made out in respect of a charge, the president shall pronounce the accused not guilty on that charge, or
 - (ii) if it has decided that a *prima facie* case has been made out in respect of a charge, the president shall direct that the trial proceed on that charge.
- (11) The accused, if he so desires, may make an opening address (*See article 112.29—“Opening Address by Accused”*).
- (12) The accused shall proceed with his defence according to the following provisions, but in such order as he sees fit:
- (a) the accused shall call witnesses for the defence, who shall be sworn by the judge advocate or, if there is no judge advocate, by the president (*See article 112.20—“Oath to be Taken by Witnesses”*) and they shall be examined by the accused (*See article 112.31—“Examination of Witnesses”*); and
 - (b) if he desires to give evidence himself, he shall be sworn by the judge advocate or, if there is no judge advocate, by the president and he shall give evidence either with or without being examined by his counsel or defending officer.
- (13) During the conduct of the case for the defence:
- (a) the prosecutor may cross-examine or apply for permission to postpone the cross-examination of each witness for the defence (*See article 112.31—“Examination of Witnesses”*), including the accused if he has given evidence; and

112.05—PROCEDURE TO BE FOLLOWED AT A COURT MARTIAL—(Cont'd)

- (b) the accused may
 - (i) if a witness for the defence other than himself has been cross-examined, re-examine that witness (*see article 112.33—“Re-Examination of Witnesses”*), and
 - (ii) if he has himself been cross-examined, be re-examined by his counsel or defending officer, or give further evidence as if he were a witness being re-examined;
 - (c) the president may, on behalf of the court, put further questions to a witness for the defence either during or at the conclusion of the examination prescribed in (12) of this article and (a) and (b) of this paragraph but should normally put any questions following the conclusion of the re-examination of the witness; and
 - (d) if a witness has been questioned under (c) of this paragraph, the president may, if he thinks fit, put such other questions to the witness as the prosecutor or the accused may request.
- (14) When the examination of all witnesses for the defence has been completed, the accused shall inform the court that the case for the defence is closed.
- (15) When the case for the defence is closed, the prosecutor may, with the permission of the president, call additional witnesses or recall any witnesses at any time before the closing address of the accused, if the witness is required to give evidence in rebuttal on any new matter raised by a witness for the defence.
- (16) The court may, during the presentation of the case for the prosecution and the case for the defence, or at any other time before the court makes a finding:
- (a) recall and question any witnesses; and
 - (b) call, cause to be sworn, and question any further witnesses.
- (17) If, under (16) of this article, a witness has been recalled or a further witness has been called, the president may, if he thinks fit, put such further questions to the witness as the prosecutor or the accused may request.
- (18) When the case for the defence has been closed and any further witnesses called by the court have been heard:
- (a) the prosecutor may apply for an adjournment in order to prepare his address;
 - (b) the prosecutor may address the court as to finding;
 - (c) the accused may apply for an adjournment in order to prepare his address;
 - (d) the accused may address the court as to finding;
 - (e) the judge advocate, if any, shall
 - (i) advise the court upon the law relating to the case,
 - (ii) if requested to do so by the president, sum up the evidence, and
 - (iii) advise the court as to any special finding it may make (*See article 112.42—“Special Findings”*);
 - (f) the court shall close to determine its finding (*See article 112.40—“Determination of Finding”*);
 - (g) the court shall reopen and pronounce to the accused the finding on each of the charges; and
 - (h) the judge advocate, if any, may, if in his opinion any finding of guilty or special finding is contrary to the law relating to the case, advise the court once more, but not oftener, as to what findings are in his opinion open to it, and the court shall then close and re-consider its finding.

112.05—PROCEDURE TO BE FOLLOWED AT A COURT MARTIAL—(Cont'd)**(19) After pronouncement of the finding:**

- (a) if the accused has been found not guilty of all the charges, the proceedings of the court shall be terminated; and
- (b) if the accused has been found guilty on any charge, the trial shall proceed on that charge.

(20) When the trial continues after a finding of guilty:

- (a) the prosecutor shall read aloud the documents mentioned in paragraph (2) (d) or (2) (e), as applicable, of article 109.04 (“Forwarding of Application for Court Martial”), which will then be included in the minutes of proceedings;
- (b) the prosecutor may inform the court of any exceptional circumstances which in his opinion might affect the severity of the punishment, and shall, if the court so directs, call witnesses to prove those circumstances, and any witnesses called shall be subject to cross-examination, re-examination and to questioning by the court; and
- (c) the accused may
 - (i) call witnesses in rebuttal of the information contained in the documents read under (a) of this paragraph or of the evidence given under (b) of this paragraph;
 - (ii) produce his certificates; and
 - (iii) with the permission of the court, call other witnesses in mitigation of punishment,and the witnesses shall be subject to cross-examination, re-examination and to questioning by the court.

(21) When the evidence described in (20) of this article has been received:

- (a) an address as to punishment (*see article 112.47*) may be made by the accused, his counsel or defending officer, or his adviser;
- (b) the accused may request the court to take into consideration, for the purposes of sentence, other service offences, similar in character to that of which the accused has been found guilty (*see article 112.48—“Similar Offences May be Admitted and Dealt with”*);
- (c) the court shall close to determine its sentence (*see article 112.49—“Method of Determining Sentence”*);
- (d) the court shall reopen and pronounce its sentence to the accused;
- (e) the president shall direct that any charges alternative to a charge upon which a plea of guilty has been accepted shall be withdrawn; and
- (f) the court shall terminate its proceedings in respect of the accused.

(M)

112.06—QUESTIONS OF LAW WHERE JUDGE ADVOCATE APPOINTED**(1) Section 162 of the *National Defence Act* provides in part**

“162. (4) Where a judge advocate has been appointed to officiate at a court martial, he may, in such circumstances and subject to such conditions and procedures as are

112.06—QUESTIONS OF LAW WHERE JUDGE ADVOCATE APPOINTED —
(Cont'd)

prescribed in regulations made by the Governor in Council, determine questions of law arising before or after the commencement of the trial.”.

(2) Notwithstanding any other article in this chapter, where a judge advocate has been appointed to act at a court martial and any of the questions of law prescribed in (9) of this article arise, the president may direct that the issue be heard and determined by the judge advocate either in the presence or absence of the president and members of the court.

(3) When the president directs that an issue be heard and determined by the judge advocate in the presence of the president and members of the court, the judge advocate shall hear the evidence and argument relating to the issue and shall give his ruling and may give such reasons therefor as he considers desirable.

(4) When the president directs that the issue be heard and determined by the judge advocate in the absence of the president and members of the court, the judge advocate shall so hear the evidence and argument relating to the issue in the court room or such other convenient place as may be decided by the president and determine the issue and may give such reasons for his determination as he considers desirable. The trial shall then proceed in the presence of the president and members of the court and the judge advocate shall give his ruling.

(5) A ruling by the judge advocate under this article shall be the ruling of the court.

(6) When the judge advocate sits alone in accordance with (4) of this article, the hearing by him of the argument and evidence relevant to the matter at issue shall form part of the proceedings of the court and shall take place and be recorded as prescribed in this chapter except for the absence of the president and members of the court. Anything which is authorized in this chapter to be done by the court, the president or a member may, subject to (7) of this article, be done by the judge advocate when sitting alone.

(7) When a judge advocate is sitting alone in accordance with (4) of this article and a person commits an offence mentioned in section 108 or section 244 of the *National Defence Act*, the judge advocate shall report the occurrence to the president and members of the court in open court who shall take such action as they consider appropriate.

(8) Except as provided in this article, the proceedings before the judge advocate when sitting alone will not be communicated to the president and members of the court until after the court has announced its finding and sentence, if any.

(9) The following questions of law may be determined by the judge advocate under this article:

- (a) applications for adjournment on the ground that the particulars of the charge are inadequate or are not set out with sufficient clarity (*see article 112.22—“Action when Particulars Deficient”*);
- (b) pleas in bar of trial on the ground that the court has no jurisdiction (*see article 112.24—“Plea in Bar of Trial”*);

112.06—QUESTIONS OF LAW WHERE JUDGE ADVOCATE APPOINTED — (Cont'd)

- (c) pleas in bar of trial on the ground that a charge was previously dismissed or that the accused was previously found guilty or not guilty of that charge by either a service tribunal or a civilian court (*see article 112.24—“Plea in Bar of Trial”*);
- (d) pleas in bar of trial on the ground that the charge does not disclose a service offence (*see article 112.24—“Plea in Bar of Trial”*);
- (e) applications by the accused to be tried separately in respect of any charge or charges (*see article 112.05 (5) (d)*);
- (f) applications for a declaration that a witness is hostile (*see article 112.32—“Declaration that Witness is Hostile”*); and
- (g) all matters respecting the admissibility and exclusion of evidence, which without limiting the generality of the foregoing, include whether
 - (i) a document is admissible,
 - (ii) evidence of an act, declaration or incident is admissible as part of the *res gestae*,
 - (iii) evidence of similar acts is admissible,
 - (iv) a communication is privileged,
 - (v) a statement in the nature of a confession or admission is free and voluntary,
 - (vi) a dying declaration is admissible,
 - (vii) a witness is competent,
 - (viii) a witness may be compelled to give evidence, and
 - (ix) a witness is privileged to refuse to answer.

(G)

(1 Mar 56)

NOTES

- (A) When a question of law prescribed in (9) of this article arises or appears to the judge advocate as likely to arise, or upon a motion by the prosecutor or accused that such a question of law be determined, the president should normally direct that the evidence and argument relating thereto be heard and that the question be determined by the judge advocate. Unless the judge advocate advises that it would not be prejudicial to the accused for the court to hear the evidence and argument on the question, the judge advocate should be directed to hear such evidence and argument in the absence of the president and members of the court. As such evidence and argument must be heard in open court, except where the public is excluded pursuant to article 112.10, the president and members should withdraw from the court room unless there is another convenient and suitable room available to which the judge advocate, the parties, the court officials and the members of the public may withdraw.
- (B) When the judge advocate, by virtue of his powers under this article, has ruled an item of evidence admissible, his ruling is on the question of admissibility only. The determination of the cogency, weight or probative value of such item of evidence is entirely and exclusively a matter for decision by the court. The prosecutor and the accused shall be given the opportunity to present for the consideration of the court evidence relating to the cogency, weight and probative value of such item of evidence including all or any part of the evidence adduced before the judge advocate when sitting alone. Moreover, when a fact of significance touching the reliability of an item of evidence that has been admitted was also a preliminary fact upon which its admissibility depended, the court, in determining the main issue under the charge, is free to take a different view of the truth or significance of this fact than did the judge advocate in determining admissibility only.

(M)

(1 Mar 56)

(112.07 TO 112.09 INCLUSIVE: NOT ALLOCATED)

Section 3—Admission to Courts Martial**112.10—WHO MAY BE PRESENT AT A COURT MARTIAL**

(1) *The National Defence Act* provides:

“151. (1) Subject to subsections two and three, courts martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the trial.

(2) Where the authority who convenes a court martial or the president of a court martial considers that it is expedient in the interests of public safety, defence or public morals that the public should be excluded during the whole or any part of a trial, either of them may make an order to that effect, and any such order shall be recorded in the minutes of the proceedings of the court martial.

(3) Witnesses, other than the prosecutor and the accused person and his representative, shall not be admitted to a trial, except when under examination or by specific leave of the president of the court martial.

(4) The president may, on any deliberation among the members, cause a court martial to be cleared of any other persons in accordance with regulations.”

(2) If any order is made under subsection two of section 151 of *The National Defence Act*, the order shall specify the ground on which it is made.

(M)

NOTES

- (A) When the convening authority has directed that the public should be excluded during the whole or any part of a trial, the president is bound by that direction and may not depart from it.
- (B) The president has power to decide that the public shall be excluded only for the three reasons specified in subsection two of section 151, that is, in the interests of public safety, defence, or public morals. When he has given this direction, the public remain excluded unless the president orders them to be re-admitted.
- (C) For the persons who may be present when a court martial has been cleared during deliberations, (see article 112.61—“*Exclusion of Persons During Closed Court*”).
- (D) When the president decides to exclude the public, he may permit officers who have been detailed to attend for purposes of instruction to remain during any part of the trial conducted in open court. Such officers do not, however, remain in court during the deliberation on findings, sentence, pleas in bar of trial or any other period when the court has been declared to be closed.
- (E) The term “closed court” should not be confused with a court sitting “in camera”. A court is said to be “closed” when in accordance with article 112.61 no person, except the judge advocate in permissible cases, is present with the members of the court during its deliberation on any matter. The court is “in camera” when its proceedings are not open to the public but the accused and prosecutor and the representatives, if any, of the accused are present.

(M)

(112.11 TO 112.13 INCLUSIVE: NOT ALLOCATED)

Section 4—Objections by Accused and Oaths to be Administered

112.14—OBJECTIONS TO PRESIDENT OR OTHER MEMBERS

- (1) Section one hundred and fifty-seven of *The National Defence Act* provides in part:
“157. (1) When a court martial is assembled, the names of the president and other members shall be read over to the accused person who shall be asked if he objects to be tried by any of them, and if he objects the court martial shall decide whether the objection shall be allowed.”
- (2) The accused may object to the president or to any other member of the court for any reasonable cause.
- (3) The accused may make or produce any statement that is pertinent to the objection.
- (4) When the statement, if any, under (3) of this article has been received, the court shall close to deal with the objections.
- (5) No member of the court shall vote upon an objection made in respect of him.
- (6) If the accused objects to the president, the court shall vote on that objection first. If the objection is allowed, the court shall re-open and adjourn until a new president is appointed by the convening authority or by the officer named by the convening authority to appoint the president (*See article 112.64—“Death or Disability of Members or other Persons”*).
- (7) If an objection, other than an objection to the president, is allowed, the member objected to shall at once retire from the court, and the president shall designate one of the alternates to replace that member. The accused shall have the right to object to any alternate so designated.
- (8) If there are not sufficient alternates to fill the places of members who have retired, the court shall reopen and adjourn until further alternates are designated by the convening authority or by the officer named by the convening authority to appoint alternates.
- (9) An objection under this article and the manner in which it was disposed of shall be recorded in the minutes of the proceedings.
- (10) When all objections have been disposed of, the court shall re-open and the president shall inform the accused of the result of each of his objections.

(M)

NOTES

- (A) The prosecutor has no right to object to any member of the court.
(B) There is no right of objection to the judge advocate or to the prosecutor.

(M)

112.15—OATH TO BE TAKEN BY MEMBERS

The oath to be taken by the members of a court martial shall be in the following form:

“I swear that I will duly administer justice according to law, without partiality, favour or affection; and I do further swear that I will not, at any time whatsoever, disclose the vote or opinion of any particular member of this court martial, unless thereunto required in due course of law. So help me God.”

(M)

112.15—OATH TO BE TAKEN BY MEMBERS—(Cont'd)

NOTE

(A) For making a solemn affirmation in lieu of an oath see article 112.21.

(M)

112.16—OATH TO BE TAKEN BY JUDGE ADVOCATE

The oath to be taken by the judge advocate shall be in the following form:

“I swear that I will carry out the duties of judge advocate without partiality, favour or affection; and I do further swear that I will not, at any time whatsoever, disclose the vote or opinion of any particular member of this court martial, unless thereunto required in due course of law. So help me God.”

(M)

NOTE

(A) For making a solemn affirmation in lieu of an oath see article 112.21.

(M)

112.17—OATH TO BE TAKEN BY REPORTER

The oath to be taken by a shorthand reporter shall be in the following form:

“I swear that I will, to the best of my ability, truly take down the evidence to be given before this court martial and such other matters as may be required, and will deliver to the court a true transcript of the same. So help me God.”

(M)

NOTE

(A) For making a solemn affirmation in lieu of an oath, see article 112.21.

(M)

112.18—OBJECTION TO INTERPRETER

(1) If there is an interpreter, the accused may object to him on the ground of partiality or incompetence.

(2) The accused may make or produce any statement that is pertinent to the objection.

(3) When the statement, if any, under (2) of this article has been received, the court shall close to deal with the objection.

(4) If an objection to an interpreter is allowed, the court may appoint another interpreter. The accused shall have the right to object to a new interpreter so appointed.

(5) When the objection has been disposed of, the court shall re-open and inform the accused of the result of his objection.

(M)

112.19—OATH TO BE TAKEN BY INTERPRETER

The oath to be taken by an interpreter shall be in the following form:

“I swear that I will, to the best of my ability, truly interpret and translate as I shall be required to do. So help me God.”

(M)

NOTE

(A) For making a solemn affirmation in lieu of an oath, see article 112.21.

(M)

112.20—OATH TO BE TAKEN BY WITNESSES

A witness, before commencing to give evidence, shall take an oath in the following form:

“I swear that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth. So help me God.”

(M)

NOTE

(A) For making a solemn affirmation in lieu of an oath, see article 112.21.

(M)

112.21—AFFIRMATION IN LIEU OF OATH

(1) Section one hundred and fifty-eight of *The National Defence Act* provides in part:

“158. (2) If a person to whom an oath is required to be administered.....

(a) objects to take the oath and the president of the court martial is satisfied of the sincerity of the objection; or

(b) is objected to as incompetent to take the oath and the president of the court martial is satisfied that the oath would have no binding effect on the conscience of that person,

the president shall require that person, instead of being sworn, to make a solemn affirmation in the form prescribed in regulations and, for the purposes of this Act, a solemn affirmation shall be deemed to be an oath.”

(2) The form of a solemn affirmation shall be as prescribed for the appropriate oath, but the words “I solemnly affirm” shall be substituted for the words “I swear”, and the words “So help me God” shall be omitted.

(M)

112.22—ACTION WHEN PARTICULARS DEFICIENT

If the accused applies for an adjournment on the ground that the particulars of the charge are set out in such fashion or are so deficient that the accused cannot properly prepare his defence, the court shall consider his application on its merits. If the court decides

112.22—ACTION WHEN PARTICULARS DEFICIENT—(Cont'd)

that the application is well founded it shall report its opinion to the convening authority and adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge and order the trial to proceed on the amended charge after due notice to the accused.

(M)

NOTES

- (A) When the convening authority amends the charge sheet under the provisions of this article the amended charge sheet must be served upon the accused at least twenty-four hours before his trial is recommenced (*see article 111.51—"Transmission of Documents to Accused"*).

(M)

(112.23: NOT ALLOCATED)***Section 5—Plea in Bar of Trial and Pleas to Charge*****112.24—PLEA IN BAR OF TRIAL**

(1) An accused may plead in bar of trial that:

- (a) the court has no jurisdiction; or
- (b) the charge was previously dismissed, or that he was previously found guilty or not guilty of that charge by either a service tribunal or a civilian court (*see article 102.17—"Previous Acquittal or Conviction"*); or
- (c) he is unfit to stand trial by reason of insanity (*see article 112.65—"Decision when Accused Insane at Trial" and article 102.175—"Accused Insane at Trial"*); or
- (d) the charge does not disclose a service offence.

(2) The accused may make any statement that is pertinent to his plea in bar of trial, and witnesses may be called:

- (a) by the accused, to support his plea;
- (b) by the prosecutor, in rebuttal of the plea; and
- (c) by the court, if it desires to hear any further evidence.

(3) When any witnesses under (2) of this article have been heard, addresses may be made to the court first by the accused and then by the prosecutor, and the accused shall have the right to make an address in reply to any address made by the prosecutor.

(4) When the evidence, if any, has been heard, the court shall close to deal with the plea in bar of trial.

(5) If a plea in bar of trial has been made, the plea and the manner in which the plea was disposed of shall be recorded in the minutes of the proceedings.

112.24—PLEA IN BAR OF TRIAL—(Cont'd)

(6) When the plea has been disposed of, the court shall re-open and inform the accused of the result of his plea in bar of trial.

(7) When a plea in bar of trial has been allowed, the court shall:

- (a) if the plea has been allowed to all charges, terminate the proceedings and report to the convening authority; or
- (b) if the plea has not been allowed to all charges
 - (i) terminate the proceedings on the charge to which a plea has been allowed,
 - (ii) proceed with the trial of the charge to which the plea has not been allowed, and
 - (iii) report at the conclusion of the trial to the convening authority as to the charges in respect of which the plea has been allowed.

(M)

NOTES

(A) A plea that the court lacks jurisdiction must be made on one or more specific grounds; for example:

- (i) that the court is not properly constituted having regard to the ranks of the members, or that it does not consist of the required number of officers, or
- (ii) that the accused is not a person liable to trial by the court, or
- (iii) that the alleged offence was committed so long before the commencement of the trial that a court martial no longer has jurisdiction.

(B) Any witnesses called under this article are subject to cross-examination and re-examination.

(M)

112.25—ACCEPTANCE OF PLEA OF GUILTY

(1) When the accused would be liable, if convicted of a charge, to be sentenced to death, the court shall not accept a plea of guilty to that charge, but shall record a plea of not guilty.

(2) When there are alternative charges:

- (a) a plea of guilty shall not be accepted to more than one of those charges; and
- (b) if one charge is more serious than the other, and the accused has pleaded not guilty to the more serious charge, the prosecutor shall inform the court as to whether the convening authority concurs in the acceptance of a plea of guilty to the less serious charge, and if the convening authority so concurs the court may accept a plea of guilty to the less serious charge.

(3) Subject to (1) and (2) of this article, if the accused pleads guilty to any charge, the judge advocate, or, if there is no judge advocate the president, shall:

- (a) explain to the accused the nature and gravity of the offence with which he is charged;
- (b) ask the accused whether the whole of the statement of particulars in the charge sheet is accurate; and

112.25—ACCEPTANCE OF PLEA OF GUILTY—(Cont'd)

(c) explain the difference in the procedure to be followed if the plea is accepted.

(4) If the accused pleads guilty, not to the offence charged but to a related or less serious offence prescribed in section one hundred and twenty of *The National Defence Act*, (see article 103.62—“*Conviction of Related or Less Serious Offences*”), the prosecutor shall inform the court as to whether the convening authority concurs in the acceptance of a plea of guilty to the related or less serious offence, and if the convening authority so concurs the court may accept the plea of guilty to the related or less serious offence.

(5) If, after (3) of this article has been complied with, it appears to the court that:

- (a) the accused did not understand the nature or gravity of the charge to which he pleaded guilty; or
- (b) that the statement of particulars in the charge sheet is in some material respect disputed by the accused; or
- (c) for any other reason the interests of justice make it expedient that a plea of guilty should not be accepted;

the court shall not accept the plea of guilty but shall record a plea of not guilty. In any other case the court may, subject to (1) and (2) of this article, accept and record a plea of guilty.

(M)

NOTE

- (A) When the accused pleads guilty to the charge, but subject to variations and exceptions in the particulars, the court may, under the conditions prescribed in article 112.42—(*Special Findings*) accept a plea of guilty but make a special finding on the charge.

(M)

112.26—CHANGE OF PLEA DURING TRIAL

(1) When the court has, under article 112.25, accepted a plea of guilty, it shall, at any time during trial, if it considers the interests of justice so require, direct that a plea of guilty be altered to a plea of not guilty and proceed as if a plea of not guilty had originally been entered.

(2) The accused may, at any time during trial before the court has closed to consider its finding, request the permission of the court to alter a plea of not guilty to a plea of guilty. If he does so, the court shall comply with the provisions of article 112.25.

(M)

112.27—PROCEDURE ON PLEA OF GUILTY

(1) When a plea of guilty is accepted, the prosecutor shall, in respect of the charge to which that plea has been accepted, inform the court of the circumstances in which the offence was committed.

(2) After (1) of this article has been complied with, the procedure shall be as prescribed in article 112.05 (21) and (22).

(M)

*Section 6—Procedure Generally***112.28—OPENING ADDRESS BY PROSECUTOR**

- (1) An opening address by the prosecutor may be oral or in writing. An opening address:
 - (a) shall not contain any assertion that the prosecutor does not intend to substantiate by evidence;
 - (b) should not be unnecessarily detailed; and
 - (c) should contain a brief statement of the substance of the charge, the circumstances in which it is alleged the offence was committed, and the nature and general effect of the evidence that it is proposed to call in support of the charge.
- (2) If the address is in writing, three copies shall be handed to the court, and a copy shall at the same time be furnished to the accused.
- (3) If the address is not in writing, it shall not be necessary to record the address except to the extent:
 - (a) directed by the judge advocate; or
 - (b) required by the prosecutor.

(M)

112.29—OPENING ADDRESS BY ACCUSED

- (1) An opening address by the accused may be oral or in writing. An opening address:
 - (a) shall not contain any assertion that the accused does not intend to substantiate by evidence;
 - (b) should not be unnecessarily detailed; and
 - (c) should contain a brief statement of the nature and general effect of the evidence that the accused proposes to call in his defence.
- (2) If the address is in writing, three copies shall be handed to the court, and a copy shall at the same time be furnished to the prosecutor.
- (3) If the address is not in writing, it shall not be necessary to record the address except to the extent:
 - (a) directed by the judge advocate or by the president; or
 - (b) required by the accused.

(M)

(112.30—NOT ALLOCATED)**112.31—EXAMINATION OF WITNESSES**

- (1) Each witness shall be examined by means of oral questions.
- (2) Subject to (3) of this article, a witness shall forthwith reply to each question put to him.

112.31—EXAMINATION OF WITNESSES—(Cont'd)

(3) When a question is objected to on the ground of substance or of form, or the witness claims privilege, the witness:

- (a) shall not answer the question until the decision of the court as to the objection or claim has been announced; and
- (b) after the announcement of the decision of the court, shall answer the question unless the objection or the claim has been allowed.

(4) If, while the witness is under examination, a discussion arises as to the allowance of a question put to him or otherwise as to his evidence, the president may direct the witness to withdraw until the discussion is concluded.

(5) The court may, if it thinks fit, allow the cross-examination of a witness to be postponed; but should not do so if in its opinion an application for postponement is made for the purposes of obstruction.

(6) If a question is put to a witness other than the accused as to a matter which is not relevant except so far as it affects the credibility of a witness and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it; and

- (a) if they are of the opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court shall require the witness to answer the question; but
- (b) if they are of the opinion that the imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court shall not require the witness to answer the question.

(7) If the accused gives evidence he shall not be asked in cross-examination any question tending to show that he has committed or been convicted of or been charged with any offence other than that with which he is then charged, or is of bad character, unless:

- (a) the proof that he has committed or been convicted of that other offence is admissible to show that he is guilty of the offence with which he is then charged; or
- (b) he has asked questions of witnesses for the prosecution with a view to establishing his own good character or has given evidence to his good character or the nature or conduct of his defence involves imputations on the character of the witnesses for the prosecution.

(8) If any question to a witness is disallowed the prosecutor and the accused shall refrain from further examination or comment on the matter.

(M)

NOTES

(A) For the general rules relating to admissibility of evidence, see section 11 of this chapter.

(B) Failure to answer questions when required to do so is an offence under sections 108 and 243 of *The National Defence Act*.

(C) If the president so desires he may close the court during any discussion as to the allowance of a question put to a witness (see article 112.61—“*Exclusion of Persons during Closed Court*”).

(M)

112.32—DECLARATION THAT WITNESS IS HOSTILE

(1) If the prosecutor or accused concludes during the examination-in-chief or the re-examination of a witness called by him that the witness is:

(a) directly hostile to him; or

(b) unwilling to give evidence;

the person calling the witness may apply to the court for a declaration that the witness is hostile.

(2) If the court declares the witness to be hostile, the person who called that witness may continue the examination-in-chief as if it were a cross-examination.

(3) A declaration that a witness is hostile shall not affect the rights of cross-examination and re-examination.

(M)

NOTES

(A) The mere fact that a witness gives evidence unfavourable to the case of the party calling him is not sufficient grounds to declare that witness to be hostile.

(M)

112.33—RE-EXAMINATION OF WITNESSES

The re-examination of a witness shall be confined to matters raised during the cross-examination of that witness.

(M)

(112.34 TO 112.39 INCLUSIVE: NOT ALLOCATED)**Section 7—Findings****112.40—DETERMINATION OF FINDING**

(1) Section one hundred and sixty-two of *The National Defence Act* provides in part:

“162. (1) The finding . . . of a court martial . . . shall be determined by the vote of a majority of the members.

(2) In the case of an equality of votes on the finding, the accused shall be found not guilty.”

(2) The members of the court shall vote orally in succession, beginning with the junior in rank.

(3) If at any time during the determination of the finding the court is in doubt whether the facts proved are sufficient in law to constitute the offence with which the accused is charged or a related or less serious offence prescribed in section 120 of *The National Defence Act* (see article 103.62—“*Conviction of Related or Less Serious Offences*”), it may, before recording a finding on that charge, reopen the court and:

(a) require the judge advocate to give his opinion, stating the facts that it finds to be proved; or

112.40—DETERMINATION OF FINDING—(Cont'd)

- (b) if there is no judge advocate, adjourn the court and refer to the convening authority for an opinion, stating the facts that it finds to be proved.
 - (4) At any time during the determination of the finding the court may reopen and:
 - (a) either
 - (i) require the judge advocate to give further advice upon the law applicable, or
 - (ii) if there is no judge advocate, adjourn the court for the purpose of seeking advice;
 - (b) direct any portion of the recorded evidence to be read aloud; and
 - (c) recall and question any witnesses and call, cause to be sworn and question any further witnesses.
- (M)

NOTES

- (A) A judge advocate will not be present during the determination of finding (*see article 112.61—“Exclusion of Persons During Closed Court”*). He should take this opportunity of explaining to any officers, who have been detailed to attend as members of the public for purposes of instruction, the procedure which the court must follow in determining its finding.
 - (B) The power given under (4) (c) of this article should be exercised in exceptional circumstances only, e.g., where it appears for the first time from the evidence given at the trial that a person, who has not been called either by the prosecutor or on behalf of the defence, was present at, and probably witnessed, the occurrence which forms the subject of the charge. Witnesses should not be called or recalled under (4) (c) of this article in order to cure an oversight on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the accused, the court should permit the accused or his representative to make a further address upon the new matter which has been elicited.
- (M)

112.41—DIRECTION RESPECTING FINDINGS

- (1) On each charge the court shall find the accused not guilty, unless it concludes that the evidence proves beyond reasonable doubt that the accused committed:
 - (a) the offence charged; or
 - (b) a related or less serious offence prescribed in section 120 of *The National Defence Act* (*see article 103.62—“Conviction of Related or Less Serious Offences”*)
 either on the particulars as charged, or on the particulars as varied under article 112.42.
 - (2) Except as prescribed in this article, and except when a special finding is made under article 112.42, the finding on each charge shall be guilty or not guilty without the addition of further words.
 - (3) If the court finds the accused guilty on a charge, it shall find him not guilty on any charge alternative to it.
- (M)

112.42—SPECIAL FINDINGS

(1) When the court concludes that:

- (a) while the facts proved differ materially from the facts alleged in the statement of particulars in the charge sheet, they are nevertheless sufficient to establish the commission of the offence stated in the charge sheet; and
- (b) the difference between the facts proved and the facts alleged in the statement of particulars has not prejudiced the accused in his defence;

the court may, instead of making a finding of not guilty, make a special finding of guilty in which is stated the exceptions or variations from the facts alleged in the statement of particulars.

(2) If the accused has been found guilty, not of the offence with which he was charged but of a related or less serious offence (*see article 103.62—“Conviction of Related or Less Serious Offence”*), the finding on that charge shall include a statement of the offence of which he has been found guilty.

(3) Section one hundred and sixty-seven of *The National Defence Act* provides in part:

“167. (1) Where evidence is given at a court martial that a person charged with a service offence was insane at the time of the commission of that offence, the court martial, if it finds that person not guilty of the offence, shall make a special finding as to whether he was insane at the time of the commission of the offence and whether he was found not guilty by reason of insanity.”

(M)

NOTES

(A) When there are four offences charged and no charges are in the alternative, a finding might, for example, be in one of the following forms:

“The court finds the accused not guilty on the first charge and guilty on the second to fourth charges inclusive”; or

“The court finds the accused not guilty on all charges”; or

“The court finds the accused guilty on all charges”; or

“The court finds the accused guilty on the first and third charges and not guilty on the second and fourth charges”.

(B) The following example will serve to show the possible findings on alternative charges. The charges may be assumed to have been:

FIRST—A charge under section 86 of *The National Defence Act* of ill-treating a subordinate

SECOND—An alternate charge to the first charge of an offence under section 118 of conduct prejudicial to good order and discipline. The cross-findings on these charges might be in any one of the following forms:

“The court finds the accused not guilty on both charges” or

“The court finds the accused guilty on the first charge and not guilty on the second charge” or

“The court finds the accused not guilty on the first charge and guilty on the second charge”.

(C) If the accused were charged with an offence under section 104 of *The National Defence Act* of stealing \$500 and the court concluded that he had stolen \$250 only, the form of special finding applicable would be:

“The court finds the accused guilty on the charge except that he stole \$250 and not \$500.”

112.42—SPECIAL FINDINGS—(Cont'd)

(D) An example of the finding of guilty of a cognate offence is as follows:

The accused is charged first under section 79 of *The National Defence Act* with desertion and secondly under section 76 with using threatening language towards a superior officer. The finding of the court might be:

"The court finds the accused guilty of absence without leave on the first charge, and guilty of behaving with contempt toward a superior officer on the second charge."

(E) When evidence has been given that the accused was insane at the time the offence is alleged to have been committed, the form of finding might be:

"The court finds the accused was insane at the time the offence was committed and finds him not guilty on the charge by reason of insanity" or

"The court finds the accused was insane at the time the offence was committed and finds him not guilty on the charge but not by reason of insanity" or

"The court finds accused guilty on the charge" or

"The court finds the accused was not insane at the time the alleged offence was committed and finds him not guilty on the charge."

(M)

112.43—DISPOSAL OF ACCUSED FOUND TO BE INSANE WHEN OFFENCE COMMITTED

(1) *The National Defence Act* provides:

"167. (1) Where evidence is given at a court martial that a person charged with a service offence was insane at the time of the commission of that offence, the court martial, if it finds that person not guilty of the offence, shall make a special finding as to whether he was insane at the time of the commission of the offence and whether he was found not guilty by reason of insanity.

(2) Where a court martial held in Canada makes a special finding under subsection one that an accused person was insane, it shall order that person to be kept in strict custody and he shall be treated in accordance with subsection two of section nine hundred and sixty-six and section nine hundred and sixty-nine of the *Criminal Code*, as if the same finding had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

(3) Where a court martial held out of Canada makes a special finding under subsection one that an accused person was insane, it shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be treated in accordance with subsection two of section nine hundred and sixty-six and section nine hundred and sixty-nine of the *Criminal Code*, as if the same finding had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit."

(2) If the court finds that the accused was insane at the time of the commission of the offences charged it shall notify the convening authority to that effect and the convening authority shall comply with (1) of this article.

(M)

(112.44 TO 112.46 INCLUSIVE: NOT ALLOCATED)

Section 8—Procedure After Finding of Guilty

112.47—ADDRESS AS TO PUNISHMENT

(1) If in the opinion of the court anything stated in the accused's address in mitigation of punishment requires to be proved, and would, if proved, affect the severity of the punishment, the court may require the accused to call witnesses in substantiation.

(2) A witness called under (1) of this article shall be subject to cross-examination, re-examination, and questioning by the court.

(M)

112.48—SIMILAR OFFENCE MAY BE ADMITTED AND DEALT WITH

(1) *The National Defence Act* provides:

"163. A court martial may at the request of the offender and in its discretion take into consideration, for the purposes of sentence, other service offences, similar in character to that of which the offender has been found guilty, that are admitted by him, as if he had been charged with, tried on and found guilty of such offences; but the sentence of the court martial shall not include any punishment higher in the scale of punishments than the punishment that might be imposed in respect of any offence of which the offender has been found guilty."

(2) The court shall record in the minutes of the proceedings whether it has acceded to or rejected a request made under (1) of this article.

(M)

NOTE

(A) The purpose of this provision is to enable an offender to ensure that when he has served his sentence he will not then be liable to further proceedings for the same type of offence. An example of the operation of this section would occur where an accused is found guilty on a charge of stealing an article from a shipmate. Upon being found guilty he might confess that he had stolen other articles from other shipmates and request the court, in awarding its sentence, to take his admission into consideration.

(M)

112.49—METHOD OF DETERMINING SENTENCE

(1) Section one hundred and twenty-one of *The National Defence Act* provides in part:

"121. (3) A punishment of death may be imposed only by a General Court Martial, and may be imposed only with the concurrence of at least two-thirds of the members."

(2) Section one hundred and sixty-two of *The National Defence Act* further provides in part:

"162. (1)..... subject to subsection three of section one hundred and twenty-one, the sentence of a court martial shall be determined by the vote of a majority of the members.

(3) In the case of an equality of votes on the sentence the president of the court martial shall have a second or casting vote."

112.49—METHOD OF DETERMINING SENTENCE—(Cont'd)

(3) The members of the court shall vote orally in succession, beginning with the junior in rank.

(M)

NOTE

(A) The judge advocate is present when the court closes to consider its sentence to advise the court as to the legality of the sentence it has decided to pass and to guide the court as to the form in which that sentence is to be expressed. The judge advocate must not comment as to the degree of severity of the sentence.

(M)

112.50—DIRECTIONS AS TO SENTENCE

(1) *The National Defence Act* provides:

“122. Only one sentence shall be passed on an offender at a trial under the Code of Service Discipline and, where the offender is convicted of more than one offence, the sentence shall be good if any one of the offences would have justified it.”

(2) The court shall, in determining the severity of punishment:

(a) take into consideration any indirect consequence of the finding or of the punishment; and

(b) impose a punishment commensurate with the gravity of the offence and the previous character of the offender.

(M)

NOTES

- (A) For the punishments which may be awarded by a service tribunal see chapter 104.
- (B) In determining the severity of punishment necessary for the prevention of other similar offences, the court should consider whether offences of this nature are unusually prevalent. An offence which is unusually prevalent may require more severe punishment than one that is rare.
- (C) The consequences of punishment may include such general consequences as delayed promotion and an adverse affect upon the subsequent service career of the offender. In addition there are certain specific consequences following conviction for certain offences.
- (D) If there is more than one offender, and one of those offenders is materially senior in rank, the senior should, as a rule, be more severely punished than his juniors. Similarly, the instigator of an offence should receive a more severe sentence than the person who was prevailed upon to commit it.
- (E) The court should particularly consider whether the offences of which the accused has been found guilty were committed with or without premeditation and with or without provocation. For example, a theft committed after prolonged preparation deserves more severe punishment than when committed on the spur of the moment; and a court would be justified in awarding a more lenient sentence to a man who has been provoked into striking his superior officer than to one who had struck his superior officer without provocation.
- (F) The court must not presume that the convening authority, in sending the case for trial, took a more serious view of the facts than the court takes.
- (G) The court may properly consider in determining its sentence the amount of time the accused has spent in custody awaiting trial. The court should remember, however, that the accused does not now forfeit pay for any period in service custody prior to conviction.
- (H) The general form of sentence will be
 “The court sentences the accused to.....”

(M)

112.51—RECOMMENDATION TO CLEMENCY

(1) *The National Defence Act* provides:

“165. Where a court martial has found a person guilty of an offence, prescribed in section sixty-four, sixty-five, sixty-six or sixty-seven, for which the punishment of death is mandatory, or in section eighty-three, for which the punishment of dismissal with disgrace from Her Majesty’s service or dismissal from Her Majesty’s service is mandatory, or an offence to which paragraph (a) of subsection two of section one hundred and nineteen applies, the court martial may recommend clemency and the recommendation shall be attached to and form part of the minutes of the proceedings of the trial.”.

(2) If the court recommends clemency, it shall record its reason for that recommendation.

(M)

NOTE

(A) The provisions of this article are only operative when a mandatory punishment is provided for the offence of which the accused has been found guilty. When there is no mandatory punishment, the court is obliged to impose punishment commensurate with the gravity of the offence and the previous character of the offender, and therefore, cannot properly recommend clemency.

(M)

(112.52 AND 112.53: NOT ALLOCATED)***Section 9 — Responsibility of Court, Judge Advocate, Prosecutor and Accused*****112.54—GENERAL RESPONSIBILITY OF THE COURT DURING TRIAL**

(1) The president of a court martial shall:

- (a) ensure that the trial is conducted in an orderly fashion and in a manner befitting a court of justice; and
- (b) be responsible for the proper performance of the duties of the court during the trial.

(2) The court shall ensure that an accused who is not represented by counsel or defending officer does not in consequence of that fact suffer any undue disadvantage.

(3) Except as provided in article 112.06 (Questions of Law where Judge Advocate Appointed), the court shall be guided by the opinion of the judge advocate upon all matters of law and procedure, and shall not disregard his opinion except for very weighty reasons.

(1 Mar 56)

(M)

112.54—GENERAL RESPONSIBILITY OF THE COURT DURING TRIAL—(Cont'd)

NOTES

- (A) Responsibility for all rulings and decisions made in the courts of the trial rests with the court.
- (B) The court must consider the grave consequences that may result from its disregard of the advice of the judge advocate on any legal matter.
- (C) The court, in following the opinion of the judge advocate on a legal matter, may record that it has decided in consequence of that opinion.

(M)

112.55—GENERAL RESPONSIBILITIES OF JUDGE ADVOCATE

- (1) The judge advocate shall at all times maintain an impartial position.
- (2) Prior to or during the trial by court martial, the judge advocate shall:
 - (a) advise the convening authority or the court of any informality or defect in the charge or in the constitution of the court;
 - (b) if the prosecutor or accused asks his opinion on any question of law or procedure relative to the charge or trial, give that opinion
 - (i) out of court, or
 - (ii) with the permission of the president, in court;
 - (c) advise the court of any informality or irregularity in the proceedings or on any other matter before the court; and
 - (d) equally with the president, take care that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, and the judge advocate may for that purpose advise the court that witnesses should be called or recalled to be questioned by the court on any matter that appears necessary or desirable to elicit the truth.
- (3) Any information or advice given to the court by the judge advocate shall, if he or the court desires it, be recorded in the minutes of the proceedings.

(M)

112.56—RESPONSIBILITY OF PROSECUTOR

- (1) The prosecutor shall:
 - (a) to the best of his ability, assist the court in the performance of its duties; and
 - (b) ensure that no material fact in favour of the accused is suppressed.
- (2) The prosecutor shall not:
 - (a) refer to any matter not relevant to proceedings before the court;
 - (b) use any undue violence of language or exhibit a lack of fairness toward the accused; or
 - (c) direct the attention of the court to the fact that the accused has not given evidence.

(M)

112.57—SCOPE OF DEFENCE

The court should allow the accused great latitude in making his defence. The court may indicate to the accused that any part of his defence is irrelevant, but should not normally refuse to hear that part solely on the ground of irrelevance.

(M)

NOTES

- (A) The accused must abstain from any remarks that are contemptuous or disrespectful towards the court, and from coarse and insulting language towards others. The accused may, for the purposes of his defence, impeach the evidence and the motives of a witness and the prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to a liability to be cross-examined as to his previous character.

(M)

112.58—RESPONSIBILITIES OF COUNSEL

- (1) Section two hundred of *The National Defence Act* provides in part:

“200. (5) Any conduct of counsel before a court martial that would be liable to censure or be contempt of court if it took place before a civil court in the place where the court martial is held shall likewise be liable to censure or be contempt of court in the case of a court martial; and the regulations governing the procedure of courts martial shall be binding upon counsel appearing before courts martial, and wilful disobedience of those regulations shall, if persevered in, be deemed to be contempt of court.”

- (2) Counsel shall treat the court and judge advocate with due respect.

(M)

Section 10—Opening Addresses and Evidence of Witnesses**112.59—AMENDMENT OF CHARGES**

The National Defence Act provides:

“161. (1) Where at any time during a trial by court martial, it appears to the president that there is a technical defect in a charge that does not affect the substance of the charge, the president, if he is of the opinion that the accused person will not be prejudiced in the conduct of his defence by an amendment, shall make such order for the amendment of the charge as he considers necessary to meet the circumstances of the case.

(2) Where an amendment to the charge has been made, the president of the court martial shall, if the accused person so requests, adjourn the court martial for such period as the president considers necessary to enable the accused person to meet the charge so amended.

(3) Where a charge is amended, a minute of the amendment shall be endorsed upon the charge sheet and signed by the president of the court martial; and the charge sheet so amended shall be treated for the purposes of the trial and all proceedings in connection therewith as being the original charge sheet.”

(C)

112.60—PROCEDURE ON INCIDENTAL QUESTIONS

(1) Subject to article 112.06 (Questions of Law where Judge Advocate Appointed), the decision of a court martial on any matter or question, except the sentence (*see article 112.49—“Method of Determining Sentence”*), shall be determined by the vote of the majority of the members. If there is an equality of votes, the president shall, except upon determination of the finding (*see article 112.40—“Determination of Finding”*), have a second or casting vote. (1 Mar 56)

(2) Subject to article 112.06 (Questions of Law where Judge Advocate Appointed), in all matters except the determination of the finding and determination of the sentence the president shall announce the decision of the court, and unless a member requires a formal vote, any decision so announced shall be deemed to be a decision of the majority of the court. If a formal vote is required, the members shall vote orally in succession beginning with the junior in rank. (1 Mar 56)

(3) If any objection on any matter of law, evidence or procedure is raised by the prosecutor or by the accused during the trial, the accused or the prosecutor respectively shall have the right to answer the objection, and the person raising the objection shall have the right to reply.

(M)

112.61—EXCLUSION OF PERSONS DURING CLOSED COURT

(1) Subject to (2) of this article, when the court has been closed for any reason, the judge advocate, if any, but no other person shall be present with the members of the court.

(2) A judge advocate shall not be present during the time the court is closed to make its finding.

(3) If, while the court is closed, it desires to adjourn, it shall re-open before doing so.

(M)

NOTES

(A) When the court closes it may do so either by retiring or by causing the place where it sits to be cleared of all persons not entitled to be present.

(M)

112.62—ADJOURNMENT OF COURT

(1) *The National Defence Act* provides:

“159. A court martial may be adjourned whenever the president considers adjournment desirable.”.

(2) When the court adjourns, the president shall when practical set a date and time at which it will re-assemble.

(M)

112.62—ADJOURNMENT OF COURT—(Cont'd)

NOTES

- (A) The president should adjourn the court if the accused would otherwise be required to make his defence at the close of a prolonged sitting.
- (B) The president should normally adjourn the court over Sundays and holidays observed by the navy, unless the exigencies of the service require it to sit.
- (C) The court should adjourn when the accused requests an adjournment upon the prosecutor calling a witness of whom the accused has not been forewarned.
- (D) When practical, the court should normally sit on successive days, excluding Sundays and holidays, until the trial is concluded.

(M)

112.63—VIEW OF COURT MARTIAL

- (1) *The National Defence Act* provides:

“156. A court martial may, where the president considers it necessary, view any place, thing or person.”

- (2) Any proceeding during a view shall be in open court.

(M)

112.64—DEATH OR DISABILITY OF MEMBERS OR OTHER PERSONS

- (1) *The National Defence Act* provides:

“160. (1) Where, after the commencement of a trial, a court martial is by death or otherwise reduced below the minimum number of members prescribed in this act, it shall be deemed to be dissolved.

(2) Where, after the commencement of a trial, the president of a court martial dies or for any other reason cannot attend and the court martial is not thereby reduced below the minimum number of members prescribed in this Act, the authority who convened the court martial may appoint the senior member of the court martial to be the president and the trial shall proceed; but if the senior member of the court martial is not of sufficient rank to be appointed president, the court martial shall be deemed to be dissolved.

(3) Where, on account of the illness of the accused person, it is impossible to continue the trial, the court martial shall be dissolved.

(4) Where a court martial is dissolved pursuant to this section, the accused person may be dealt with as if the trial had never commenced.”

- (2) If a judge advocate has been appointed and is for any cause unable to attend, the president shall adjourn the court and report the circumstances to the convening authority. The convening authority may authorize the court to stand adjourned until the judge advocate is able to attend, or if he considers delay to be inexpedient:

- (a) if the court is a General Court Martial, appoint a new judge advocate; or
- (b) when the court is a Disciplinary Court Martial, either appoint a new judge advocate or direct that no further judge advocate shall be appointed.

(M)

112.65—DECISION WHEN ACCUSED INSANE AT TRIAL

(1) Section one hundred and sixty-six of *The National Defence Act* provides in part:

“166. (1) Where at any time after a trial by court martial commences and before the finding of the court martial is made, it appears that there is sufficient reason to doubt whether the accused person is then, on account of insanity, capable of conducting his defence, an issue shall be tried and decided by that court martial as to whether the accused person is or is not then, on account of insanity, unfit to stand or continue his trial.

(2) Where the decision of the court martial on an issue mentioned in subsection one is that the accused person is not then unfit to stand or continue his trial, the court martial shall proceed to try that person as if no such issue had been tried.”

(2) When a court martial, acting in accordance with (1) of this article, determines that the accused person is unfit to stand or continue his trial because he is insane, the president shall order the accused person to be kept in strict custody.

(M)

NOTES

(A) The provisions of (2) of this article are derived from 166 (3) and (4) of *The National Defence Act*, which should be referred to for further details concerning the subsequent disposition of the accused.

(M)

112.66—MINUTES OF PROCEEDINGS

(1) The minutes of the proceedings shall include a record of all proceedings in open court.

(2) If there is no shorthand reporter at a court martial, the substance of the evidence given by each witness shall be recorded by a member of the court detailed by the president for that purpose.

(3) Upon the conclusion of the trial the minutes of the proceedings shall be dated and signed by the president and by the judge advocate, if any.

(4) One copy of the minutes of the proceedings shall be forwarded as soon as practical after the conclusion of the trial to the convening authority.

(5) If the accused has been found guilty on any charge, one copy of the minutes of the proceedings shall be furnished to him as soon as practical after the conclusion of the trial.

(M)

NOTES

(A) At the same time that a copy of the minutes of the proceedings is furnished to an accused who has been found guilty, the accused should be handed a Statement of Appeal. (see article 115.02—“Entry of Appeals”).

(M)

112.67—PRESENCE THROUGHOUT OF ALL MEMBERS OF COURT

(1) No member of a court who has been absent while any part of the evidence during the trial of an accused person is taken shall take further part in the trial of that person.

(2) No officer shall be added to a court after the objections, if any, of the accused have been disposed of.

(M)

112.675—SWEARING OF COURT TO TRY SEVERAL ACCUSED

(1) A court may be sworn at one time to try any number of accused then present before it but the trial of each of the accused shall be separate unless the Minister has otherwise directed (*see article 101.09—"Joint Trials"*).

(2) Subject to article 101.09, the court, when sworn, shall proceed with one case, postponing the other cases and taking them afterwards in succession.

(M)

Section 11—Rules of Evidence**112.68—PROVINCIAL LAW TO BE APPLIED**

The National Defence Act provides:

"152. (1) The rules of evidence at a trial by court martial held in Canada shall be the same as those from time to time followed in proceedings under the *Criminal Code* in civil courts in the province of Canada in which the court martial is held, except in so far as such rules are inconsistent with this Act or regulations.

(2) Where a court martial is held out of Canada or in a ship beyond the territorial limits of Canada, the rules of evidence shall be the same as those from time to time followed in proceedings under the *Criminal Code* in civil courts in the province in which the accused person states to the court martial that his ordinary place of residence is situated, except in so far as such rules are inconsistent with this Act or regulations.

(3) Where, in the circumstances mentioned in subsection two, an accused person states that his ordinary place of residence is situated out of Canada, or makes no statement as to his ordinary place of residence, the court martial shall apply the rules of evidence from time to time followed in proceedings under the *Criminal Code* in civil courts in the province in which the capital city of Canada is situated, except in so far as such rules are inconsistent with this Act or regulations.

(4) A court martial, wherever held, shall not as respects the conduct of its proceedings or the reception or rejection of evidence or as respects any other matter or thing, be subject to any Act, law or regulation not in force in Canada."

(C)

112.69—ADMISSIBILITY OF DOCUMENTS AND RECORDS

(1) Section one hundred and fifty-three of *The National Defence Act* provides in part:

"153. (1) Such classes of documents and records as are prescribed in regulations made by the Governor in Council may be admitted as evidence of the facts

112.69—ADMISSIBILITY OF DOCUMENTS AND RECORDS—(Cont'd)

therein stated at trials by court martial or in any proceedings before civil courts arising out of such trials, and the conditions governing the admissibility of such classes of documents and records or copies thereof shall be as prescribed in those regulations.”

(2) Any document that is made or kept in pursuance of any Act of Parliament or King's Regulations and Orders for any Service of the Canadian Forces, or in pursuance of orders or instructions issued under any such Act or Regulations and Orders, may be admitted at proceedings before a court martial as evidence of the facts therein stated.

(3) Any copy of a document described in (2) of this article shall, when certified as a true copy of the original by or on behalf of the commanding officer of the ship or establishment making or keeping the original document, be admissible as if it were the original.

(4) Any photographic reproduction of a document described in (2) of this article shall be admissible as if it were the original document.

(G)

NOTES

(A) This article does not provide for the matters of which the court may take judicial notice (*see article 101.04*), but enables the prosecutor and the accused to produce certain classes of documents as evidence of their contents. Documents admissible would include, among many others, the following: leave forms, ledger sheets, conduct sheets, daily routine orders, medical history sheets, attestation forms, pay documents, travelling expenses claims and service certificates.

(M)

112.70—EVIDENCE ON COMMISSION

The National Defence Act provides:

“155. (1) Where it appears to the Judge Advocate General, or to such person as he may appoint for that purpose, that the attendance at a trial by court martial of a witness for the prosecution is not readily obtainable because the witness is ill or is absent from the country in which the trial is held, or that the attendance of a witness for the accused person is not readily obtainable for any reason, the Judge Advocate General, or such person as he may appoint for that purpose, may appoint any officer or other qualified person, in this section referred to as a “commissioner”, to take the evidence of the witness under oath.

(2) The document containing the evidence of a witness, taken under subsection one and duly certified by the commissioner, shall be admissible in evidence at a court martial to the same extent and subject to the same objections as if the witness had given that evidence in person at the trial.

(3) Where in the opinion of the president of a court martial, a witness whose evidence has been taken on commission, should in the interests of justice appear and give evidence before the court martial and that witness is not too ill to attend the trial and is not outside the country in which the trial is held, the president may require the attendance of that witness.

(4) The document mentioned in subsection two or a true copy thereof may be attached to the summary or abstract of evidence taken in respect of the charge against the accused person and, on being so attached, that document shall form part of the summary or abstract of evidence.

(5) At any proceedings before a commissioner the accused person and the prosecutor shall be entitled to be represented and the persons representing them shall have the right to examine and cross-examine any witness.

112.70—EVIDENCE ON COMMISSION—(Cont'd)

(6) The accused person shall, at least twenty-four hours before it is admitted at the court martial, be furnished without charge with a copy of the document mentioned in subsection two."

(C)

112.71—INCRIMINATING QUESTIONS

(1) No witness before a court martial shall refuse to answer a question put to him solely on the ground that an answer to that question may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

(2) No evidence given by a witness before a court martial shall be admissible at any proceeding against him, except on a charge under section one hundred and nine of *The National Defence Act* or of committing perjury in respect of that evidence.

(M)

NOTES

(A) Failure to answer questions when required to do so is an offence under sections 108 and 243 of *The National Defence Act*.

(M)

112.72—STATUTORY DECLARATIONS

Section one hundred and fifty-three of *The National Defence Act* provides in part:

"153. (2) A court martial may receive, as evidence of the facts therein stated, declarations made in the manner prescribed by section thirty-six of *The Canada Evidence Act*, subject to the following conditions,

- (a) where the declaration is one that the prosecutor wishes to introduce, a copy shall be served upon the accused person at least seven days before the trial;
- (b) where the declaration is one that the accused person wishes to introduce, a copy shall be served upon the prosecutor at least three days before the trial; and
- (c) at any time before the trial the party upon whom the copy of the declaration has been served under paragraph (a) or (b) may notify the opposite party that he will not consent to the declaration being received by the court martial, and in that event the declaration shall not be received."

(C)

NOTES

(A) Section 36 of *The Canada Evidence Act* relates to statutory declarations. For the form of such declarations (see article 111.53—"Form and Service of Statutory Declarations").

(B) When the requirements of section 153(2) of *The National Defence Act* as to length of notice cannot be complied with unless the trial is postponed, the prosecutor or accused, as the case may be, may request the convening authority to postpone the trial.

(M)

(112.73 TO 112.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 113

STANDING COURTS MARTIAL

(Reserved for Army and Air Force)

CHAPTER 113

SPECIAL GENERAL COURTS MARTIAL AND
STANDING COURTS MARTIAL

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

Section 1 — Special General Courts Martial**113.01—DEFINITIONS**

For the purposes of proceedings under the Code of Service Discipline:

- (a) "Special General Court Martial" means a General Court Martial constituted in accordance with subsection (7b) of section 56 of the *National Defence Act*;
- (b) "Civilian" means any person mentioned in paragraph (f) of subsection (1) of section 56 of the *National Defence Act* (see articles 102.01—"Persons Subject to the Code of Service Discipline" and 102.09—"Persons Accompanying the Canadian Forces");
- (c) "Presiding Judge" means a person designated by the Minister in accordance with subsection (7b) of section 56 of the *National Defence Act*; and
- (d) "Military Adviser" means the person appointed to officiate as judge advocate at a Special General Court Martial.

(M)

(7 Feb 56)

**113.02—SPECIAL GENERAL COURTS MARTIAL FOR TRIAL OF
CIVILIANS**

Section 56 of *The National Defence Act* provides in part:

"56. (7a) For the purposes of this section, but subject to any limitations prescribed by the Governor in Council, a person accompanies a unit or other element of the Canadian Forces that is on service or active service if such person

- (a) participates with that unit or other element in the carrying out of any of its movements, manoeuvres, duties in aid of the civil power, duties in a disaster, or warlike operations,
- (b) is accommodated or provided with rations at his own expense or otherwise by that unit or other element in any country or at any place designated by the Governor in Council (see article 102.09 for countries designated),
- (c) is a dependant out of Canada of an officer or man serving beyond Canada with that unit or other element, or
- (d) is embarked on a vessel or aircraft of that unit or other element.

(7b) Notwithstanding anything in this Act, where a person mentioned in subsection (7a) is to be tried by a court martial

- (a) he shall, if he comes within paragraph (c) of that subsection, and
- (b) he may, if he comes within paragraph (a), (b) or (d) of that subsection,

113.02—SPECIAL GENERAL COURTS MARTIAL FOR TRIAL OF CIVILIANS—(Cont'd)

be tried by a General Court Martial" (*referred to in this section as Special General Court Martial*) "consisting of a person, designated by the Minister, who is or has been a judge of a superior court in Canada, or is a barrister or advocate of at least ten years' standing at the bar of any province of Canada, and, subject to such modifications and additions as the Governor in Council may prescribe, the provisions of this Act and the regulations relating to trials of accused persons by General Courts Martial and to their conviction, sentence and punishment are applicable to trials by a General Court Martial established under this subsection, and to the conviction, sentence and punishment of persons so tried."

(C) (23 Jan 56)

113.03—JURISDICTION OF SPECIAL GENERAL COURTS MARTIAL

A Special General Court Martial may only try a civilian.

(G) (P.C. 1956-606 of 19 Apr 56) (19 Apr 56)

NOTES

(A) Jurisdiction to try persons subject to the Code of Service Discipline under section 56(7a)(c) (dependant out of Canada of an officer or man serving beyond Canada) is restricted to Special General Courts Martial. Persons subject to the Code of Service Discipline under section 56(7a)(a), (b) or (d) may be tried by General Court Martial or Special General Court Martial.

(M) (7 Feb 56)

113.04—LIMITATIONS OF POWERS OF PUNISHMENT OF SPECIAL GENERAL COURTS MARTIAL

Only those punishments prescribed in paragraphs (a), (b), (d) and (l) of subsection one of section 121 of the *National Defence Act* (see article 104.02—"Scale of Punishments") shall be imposed by a Special General Court Martial.

(G) (P.C. 1956-606 of 19 Apr 56) (19 Apr 56)

NOTES

(A) A civilian may only be committed to undergo imprisonment in a service prison or detention barrack on the authority of the Chief of the Naval Staff (see articles 114.43—"Committal to Penitentiaries" and 114.44—"Committal to Civil Prisons").

(M) (7 Feb 56)

113.05—DESIGNATING ORDER—SPECIAL GENERAL COURTS MARTIAL

(1) Section 56 of the *National Defence Act* provides in part:

" a General Court Martial consisting of a person, designated by the Minister, who is or has been a judge of a superior court in Canada, or is a barrister or advocate of at least ten years' standing at the bar of any province of Canada,".

(2) The Minister's designating order may be in the following form:

113.05—DESIGNATING ORDER—SPECIAL GENERAL COURTS MARTIAL —(Cont'd)

“ORDER

I,,
Minister of National Defence, do hereby, pursuant to the authority vested in me by
Section 56 of the *National Defence Act*, designate.....
(Presiding Judge)
as a General Court Martial, referred to in the Queen's Regulations as a Special General
Court Martial, for the trial of

and such other person or persons

or

such persons

described in subsection (7a) of Section 56 of the *National Defence Act* as may be brought
before it.

Dated at....., this.....day of....., 19....

.....”
Minister of National Defence

(M)

(7 Feb 56)

113.06—WHO MAY DIRECT TRIAL OF A CIVILIAN BY SPECIAL GENERAL COURT MARTIAL

The following persons may direct the trial of a civilian by Special General Court Martial:

- (a) the Minister;
- (b) the Chief of the Naval Staff;
- (c) a Senior Officer in Chief Command or any other officer authorized to exercise
the powers of a Senior Officer in Chief Command; or
- (d) such other service authorities as the Minister may prescribe or appoint for that
purpose.

(M)

(7 Feb 56)

113.07—APPLICATION OF NATIONAL DEFENCE ACT AND REGULATIONS —SPECIAL GENERAL COURTS MARTIAL

Except as otherwise specifically provided in this section, all the provisions of the *National
Defence Act* and these regulations relating to General Courts Martial and to the trial,
conviction, sentence and punishment of accused persons shall apply with the necessary
changes or alterations to Special General Courts Martial and to the trial, conviction,
sentence and punishment of a civilian tried by Special General Courts Martial.

(G) (P.C. 1956-606 of 19 Apr 56)

(19 Apr 56)

NOTES

- (A) Certain changes or alterations are obviously necessary in applying sections of the *National Defence
Act* and the regulations to Special General Courts Martial. Certain sections are not applicable

113.07—APPLICATION OF NATIONAL DEFENCE ACT AND REGULATIONS —SPECIAL GENERAL COURTS MARTIAL—(Cont'd)

(see *Note (B)*), while others must be applied in a modified way. For example, section 160(1) of the Act provides that a court martial is deemed to be dissolved where, after the commencement of a trial, the court is by death or otherwise reduced below the minimum number of members prescribed in the Act. In the case of a special General Court Martial, this section of the Act would be read to mean that the court martial is deemed to be dissolved where the presiding judge dies or is no longer able to act after the commencement of the trial.

- (B) The following sections of the *National Defence Act* and regulations have no bearing in respect of Special General Courts Martial:
- (i) Subsection (2) of section 138 (see article 111.19—“*Eligibility to serve on General Courts Martial*”);
 - (ii) Section 140 (see articles 111.18—“*Number of Members of General Court Martial*”, and 111.21—“*Rank of President and Members of General Court Martial*”);
 - (iii) Section 142 (see article 111.20—“*Ineligibility to Serve on General Court Martial*”); and
 - (iv) Article 112.03 (Inquiry as to Disqualification of Members).
- (C) The procedure for investigating and forwarding applications for disposal of charges by higher authority should be followed with the necessary changes and alterations (see *Chapter 109*—“*Application for Disposal of Charges by Higher Authority*”).

(M)

(7 Feb 56)

113.08—DUTIES OF AUTHORITY DIRECTING TRIAL BY SPECIAL GENERAL COURT MARTIAL

Except as provided in this section, the authority directing trial of a civilian by a Special General Court Martial shall carry out the duties of a convening authority under these regulations.

(M)

(7 Feb 56)

NOTES

- (A) The authority directing trial must appoint or ensure that a Military Adviser is appointed (see article 111.22—“*Appointment of Judge Advocate at General Court Martial*”).

(M)

(7 Feb 56)

113.09—ACTION ON RECEIPT OF APPLICATION FOR DISPOSAL OF CHARGE

(1) When an officer who has power to direct trial by Special General Court Martial receives an application forwarded under article 109.04 concerning a civilian and considers that the charge should not be proceeded with, either because there does not appear to be sufficient evidence to justify the accused civilian's being tried, or for any other reason, he shall dismiss the charge and cause the accused civilian to be informed of the dismissal.

(2) When the officer described in (1) of this article considers that the charge should be proceeded with, he:

- (a) shall, in the case of a civilian who is a dependant, endorse a direction for trial by Special General Court Martial on the charge sheet of the accused civilian, sign it, and cause to be informed the Minister, the accused civilian, and such other persons as may be concerned; or
- (b) may, in the case of a civilian who is not a dependant, direct trial by Special General Court Martial and follow the procedure in (2)(a); or
- (c) if he does not direct trial by Special General Court Martial under (2)(b), he shall

- (i) if he has power to convene a General Court Martial, direct that the accused civilian be tried by a General Court Martial, or

113.09—ACTION ON RECEIPT OF APPLICATION FOR DISPOSAL OF CHARGE —(Cont'd)

- (ii) if he has no power to convene a General Court Martial, forward the application for disposal together with the supporting documents and his recommendations to his next superior officer who has the power to convene a General Court Martial.

(M) (7 Feb 56)

NOTES

- (A) The officer directing trial by Special General Court Martial may inform the accused and other persons concerned by Notice of Trial which may be in the following form:

“NOTICE OF TRIAL

A Special General Court Martial has been constituted by the Minister of National Defence, pursuant to section 56 of the *National Defence Act* for the trial of persons described in subsection (7a) of that section.

The presiding judge will be.....
who has appointed.....as the place and
.....as the date and time for the trial
of.....and
such other persons as may be brought before the court.

.....is (has been)
appointed Military Adviser.

The commanding officer ofshall*

.....”
Officer Directing Trial by Special
General Court Martial

*The officer directing trial by Special General Court Martial may insert administrative details, i.e., provision of court room, court orderlies, court reporter, in this paragraph.

(M) (7 Feb 56)

113.10—PRESIDING JUDGE—SPECIAL GENERAL COURT MARTIAL

Any reference in the *National Defence Act* or in these regulations to the president or members of a General Court Martial shall be construed as a reference to the presiding judge of a Special General Court Martial.

(G) (P.C. 1956-606 of 19 Apr 56) (19 Apr 56)

113.11—OBJECTIONS TO PRESIDING JUDGE

- (1) Section 157 of the *National Defence Act* provides in part:

“157. (1) When a court martial is assembled, the names of the president and other members shall be read over to the accused person who shall be asked if he objects to be tried by any of them, and if he objects the court martial shall decide whether the objection shall be allowed.”.

(2) Under section 157 of the *National Defence Act*, the accused may object to the presiding judge of a Special General Court Martial for any reasonable cause.

(3) The accused may make or produce any statement that is pertinent to the objection.

113.11—OBJECTIONS TO PRESIDING JUDGE—(Cont'd)

(4) When the statement, if any, under paragraph (3) of this article has been received, the presiding judge shall dispose of the objection.

(5) An objection under this article and the manner in which it was disposed of shall be recorded in the minutes of the proceedings.

(6) When the objection has been disposed of, the presiding judge shall inform the accused of the result of his objection.

(7) If the objection of the accused is allowed, the presiding judge shall adjourn and inform the Minister of the circumstances.

(M)

(7 Feb 56)

NOTES

(A) The prosecutor has no right to object to the presiding judge.

(B) There is no right of objection to the military adviser or to the prosecutor.

(C) The presiding judge should on considering his decision in respect of an objection apply the principles followed in the civil courts in proceedings under the Criminal Code.

(M)

113.12—OATH TO BE TAKEN BY PRESIDING JUDGE—SPECIAL GENERAL COURT MARTIAL

The oath to be taken by the presiding judge at a Special General Court Martial shall be in the following form:

“I swear that I will duly administer justice according to law, without partiality, favour or affection. So help me God.”

(M)

(7 Feb 56)

NOTES

(A) For making a solemn affirmation in lieu of an oath see article 112.21.

(M)

(7 Feb 56)

113.13—PROCEDURE TO BE FOLLOWED AT A SPECIAL GENERAL COURT MARTIAL

(1) Subject to (2), (3) and (4) of this article, the provisions of article 112.05 (Procedure to be Followed at a Court Martial) shall apply to a Special General Court Martial.

(2) The presiding judge:

(a) shall not be required to close the court to determine

(i) whether a *prima facie* case has been established,

(ii) the finding, or

(iii) the sentence; and

(b) shall, if he deems it advisable, state the law upon which his decision is based and such findings of fact as he considers necessary to clarify his decision for the purposes of review.

(3) The Military Adviser shall swear the presiding judge and perform only such other duties and give such assistance and advice as is requested by the presiding judge.

(4) The prosecutor shall, when a trial continues after a finding of guilty, call witnesses to prove, as far as is practical:

113.13—PROCEDURE TO BE FOLLOWED AT A SPECIAL GENERAL COURT MARTIAL—(Cont'd)

- (a) the character and age of the accused;
- (b) the length of time the accused has been awaiting trial and the circumstances respecting the custody of the accused during that period; and
- (c) any previous convictions by any other court of criminal jurisdiction;

and any witnesses called shall be subject to cross-examination, re-examination and to questioning by the court.

(G) (P.C. 1956–606 of 19 Apr 56)

(19 Apr 56)

113.14—DECISIONS—SPECIAL GENERAL COURTS MARTIAL

The presiding judge shall at a trial of an accused civilian have the sole decision on any matter or question to be determined.

(G) (P.C. 1956–606 of 19 Apr 56)

(19 Apr 56)

(113.15 TO 113.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 114

PROVISIONS APPLICABLE TO FINDINGS AND SENTENCES AFTER TRIAL

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

Section 1—Introduction**114.01—APPLICATION OF CHAPTER**

This chapter applies to findings made and sentences passed at summary trials and at courts martial.

(M)

114.02—CUSTODY AFTER CONVICTION

When the word “custody” is used in this chapter, it relates to custody following conviction.

(M)

NOTES

(A) For provisions respecting custody before conviction, see Chapter 105.

(M)

(114.03 TO 114.04 INCLUSIVE: NOT ALLOCATED)**Section 2—Commencement of Punishment****114.05—GENERAL RULE**

Except as otherwise provided in this chapter, a punishment shall commence on the date upon which the service tribunal pronounces sentence upon the offender.

(M)

NOTES

(A) Exceptions to the general rule stated in this article are contained in the following sections of *The National Defence Act*:

- (i) Section 169(3)—article 114.06 (*Imprisonment and Detention*)
- (ii) Section 170(1)—article 114.07 (*Approval of Punishment of Death*)
- (iii) Section 170(2) and (3)—article 114.08 (*Approval of Dismissal or Dismissal with Disgrace*)
- (iv) Section 176—article 114.31 (*Effect of New Punishment*)
- (v) Section 177—articles 114.35 and 114.36 (*Suspension of Imprisonment or Detention*).

(B) Punishments imposed at summary trials referred to higher authority for approval are not pronounced until after advice is received from higher authority (*see article 108.33—“Pronouncement of Finding and Sentence by Commanding Officer”*). Such punishments are not, therefore, exceptions to the general rule stated in this article.

(M)

114.06—IMPRISONMENT AND DETENTION

The National Defence Act provides:

"169. (1) Subject to subsection three and sections one hundred and seventy-six (see article 114.31—*Effect of New Punishments*) and one hundred and seventy-seven (see articles 114.35 and 114.36—*Suspension of Imprisonment or Detention*), the term of punishment of imprisonment for two years or more, imprisonment for less than two years or detention, shall commence on the date upon which the service tribunal pronounces sentence upon the offender.

(2) The only time which shall be reckoned toward the completion of a term of a punishment of imprisonment for two years or more, imprisonment for less than two years or detention shall be the time that the offender spends in civil custody or service custody while under the sentence in which that punishment is included.

(3) Where a punishment mentioned in subsection two cannot lawfully be carried out by reason of a vessel being at sea or in a port at which there is no suitable place of incarceration, the offender shall as soon as practical, having regard to the exigencies of the service, be sent to a place where the punishment can lawfully be carried out, and the period of time prior to the date of arrival of the offender at that place shall not be reckoned toward the completion of the term of the punishment."

(C)

114.07—APPROVAL OF PUNISHMENT OF DEATH

Section one hundred and seventy of *The National Defence Act* provides in part:

"170. (1) A punishment of death imposed by a court martial shall be subject to approval by the Governor in Council and shall not be carried out unless so approved."

(C)

114.08—APPROVAL OF DISMISSAL WITH DISGRACE OR DISMISSAL

(1) Section one hundred and seventy of *The National Defence Act* provides in part:

"170. (2) A punishment of dismissal with disgrace from His Majesty's service or of dismissal from His Majesty's service, whether it is expressly included in the sentence passed by a service tribunal or whether it is deemed to be included in the sentence pursuant to paragraph (b) or (c) of subsection four of section one hundred and twenty-one (see article 104.05—*Imprisonment*), shall be subject to approval by the Minister or such authorities as are prescribed in regulations and shall not be carried out unless so approved; but any punishment of imprisonment for two years or more, imprisonment for less than two years or detention included in the sentence shall commence and be carried out under section one hundred and sixty-nine (see article 114.06) as if the sentence had not included a punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service, as the case may be.

(3) A punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service shall be deemed to be carried out as of the date upon which the release of the offender from the Canadian Forces is effected."

(2) The following authorities shall have power to act under subsection two of section one hundred and seventy of *The National Defence Act*:

(a) the Minister; or

114.08—APPROVAL OF DISMISSAL WITH DISGRACE OR DISMISSAL—(Cont'd)

(b) when the offender is a man sentenced to dismissal, whether or not he was sentenced by a navy court martial, the Chief of the Naval Staff.

(3) When the offender is a member of the army or air force, sentenced by a navy court martial, power to act under paragraph (2) of this article shall be exercised only by the Minister or the chief of staff of the Service to which the offender belongs.

(M)

(114.09 TO 114.14 INCLUSIVE: NOT ALLOCATED)**Section 3—Findings****114.15—QUASHING OF FINDINGS**

(1) Section one hundred and seventy-one of *The National Defence Act* provides in part:

“171. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may quash any finding of guilty made by a service tribunal.”

(2) The following authorities shall have power to act under subsection one of section one hundred and seventy-one of *The National Defence Act*:

- (a) the Minister;
- (b) the Chief of the Naval Staff;
- (c) a senior officer in chief command; or
- (d) such other authorities as the Minister may prescribe or appoint for that purpose.

(M)

NOTES

(A) The Minister has, by article 114.55, prescribed commanding officers as additional authorities to act under this article in certain cases.

(M)

114.16—EFFECT UPON SENTENCE OF QUASHING FINDINGS

Section one hundred and seventy-one of *The National Defence Act* provides in part:

“171. (2) Where, after a finding of guilty has been quashed, no other finding of guilty remains, the whole of the sentence passed by the service tribunal shall cease to have force and effect.”

(3) Where, after a finding of guilty has been quashed, another finding of guilty remains and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the findings of guilty which remain, or is, in the opinion of the authority who quashed the finding, unduly severe, he shall subject to the conditions set out in section one hundred and seventy-five (see article 114.31—*Effect of New Punishments*), substitute such new punishment or punishments as he considers appropriate.”

(C)

114.16—EFFECT UPON SENTENCE OF QUASHING FINDINGS—(Cont'd)

NOTES

(A) The Minister has, by article 114.55, prescribed commanding officers as additional authorities to act under this article in certain cases.

(M)

114.17—SUBSTITUTION OF FINDINGS

(1) Section one hundred and seventy-two of *The National Defence Act* provides in part:

“172. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may substitute a new finding for any finding of guilty, made by a service tribunal, that is illegal or cannot be supported by the evidence, if the new finding could validly have been made by the service tribunal on the charge and if it appears that the service tribunal was satisfied of the facts establishing the offence specified or involved in the new finding.”

(2) The following authorities shall have power to act under subsection one of section one hundred and seventy-two of *The National Defence Act*:

(a) the Minister;

(b) the Chief of the Naval Staff;

(c) a senior officer in chief command; or

(d) such other authorities as the Minister may prescribe or appoint for that purpose.

(M)

NOTES

(A) The Minister has, by article 114.55, prescribed commanding officers as additional authorities to act under this article in certain cases.

(M)

114.18—EFFECT UPON SENTENCE OF SUBSTITUTION OF FINDINGS

Section one hundred and seventy-two of *The National Defence Act* provides in part:

“172. (2) Where a new finding has been substituted for a finding made by a service tribunal and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the new finding, or is, in the opinion of the authority who substituted the new finding, unduly severe, he shall, subject to the conditions set out in section one hundred and seventy-five (*see article 114.31—Effect of New Punishments*), substitute such new punishment or punishments as he considers appropriate.”

(C)

(114.19 TO 114.24 INCLUSIVE: NOT ALLOCATED)

Section 4—Alteration of Punishments

114.25—ILLEGAL PUNISHMENTS

(1) *The National Defence Act* provides:

“173. Where a service tribunal has passed a sentence in which is included an illegal punishment, the Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section one hundred and seventy-five (*see article 114.31—“Effect of New Punishments”*), substitute for the illegal punishment such new punishment or punishments as he considers appropriate.”

(2) The following authorities shall have power to act under section one hundred and seventy-three of *The National Defence Act*:

- (a) the Minister;
- (b) the Chief of the Naval Staff;
- (c) a senior officer in chief command; or
- (d) such other authorities as the Minister may prescribe or appoint for that purpose.

(M)

NOTES

(A) The Minister has, by article 114.55, prescribed commanding officers as additional authorities to act under this article in certain cases.

(M)

114.26—PUNISHMENTS THAT HAVE NOT BEEN APPROVED

Section one hundred and seventy of *The National Defence Act* provides in part:

“170. (4) An authority mentioned in section one hundred and seventy-three (*see article 114.25—“Illegal Punishments”*) shall have power to substitute a new punishment for

- (a) a punishment of death that has not been approved under subsection one;
- (b) a punishment of dismissal with disgrace from His Majesty’s service or dismissal from His Majesty’s service that has not been approved under subsection two; or
- (c) a punishment, imposed by a commanding officer at a summary trial, that has not been approved under subsection two or five of section one hundred and thirty-six (*see table A to article 108.27—“Summary Powers of Punishment of a Commanding Officer—Men”*), as the case may be.”

(C)

NOTES

(A) The authorities mentioned in section 173 are prescribed in article 114.25.

(M)

114.27—MITIGATION, COMMUTATION AND REMISSION OF PUNISHMENTS

(1) *The National Defence Act* provides:

“174. The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section one hundred and seventy-five (see article 114.30—“*Conditions Applicable to New Punishments*”), mitigate, commute or remit any or all of the punishments included in a sentence passed by a service tribunal.”

(2) The following authorities shall have power to act under section one hundred and seventy-four of *The National Defence Act*:

- (a) the Minister;
- (b) the Chief of the Naval Staff;
- (c) a senior officer in chief command; and
- (d) such other authorities as the Minister may prescribe or appoint for the purpose.

(M)

NOTES

- (A) Mitigation is awarding a less amount of the same punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent, to a remission of part of the sentence.
- (B) Remission may be remission of the whole of or part of a sentence; thus a sentence of imprisonment may be remitted altogether or a portion of the term may be remitted.
- (C) Commutation is changing the type of punishment by awarding a punishment lower in the scale.
- (D) The Minister has, by article 114.55, prescribed commanding officers as additional authorities to act under this article in certain cases.

(M)

114.28—ORDER THAT IMPRISONMENT BE WITHOUT HARD LABOUR

(1) Section one hundred and twenty-one of *The National Defence Act* provides in part:

“121. (4) The punishment of imprisonment for two years or more or imprisonment for less than two years is subject to the following conditions,

- (g) a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to be a punishment of imprisonment with hard labour, but in the case of a punishment of imprisonment for less than two years, the Minister or such authorities as he may prescribe or appoint for that purpose may order that such punishment shall be without hard labour.”

(2) The following authorities shall have power to act under section 121(4)(g) of *The National Defence Act*:

- (a) the Minister;
- (b) the Chief of the Naval Staff;
- (c) a senior officer in chief command;
- (d) such other authorities as the Minister may prescribe or appoint for that purpose.

(M)

**114.28—ORDER THAT IMPRISONMENT BE WITHOUT HARD LABOUR
—(Cont'd)****NOTES**

- (A) Before making an order under this article, the appropriate authority should acquaint himself with the nature of the institution where the offender would serve his punishment and the conditions of incarceration that would apply as a consequence of alteration in the punishment.

(M)

(114.29: NOT ALLOCATED)***Section 5—General Provisions Respecting New Punishments*****114.30—CONDITIONS APPLICABLE TO NEW PUNISHMENTS**

The National Defence Act provides:

“175. The following conditions shall apply where under this Act a new punishment, by way of substitution or commutation, replaces a punishment imposed by a service tribunal,

- (a) the new punishment shall not be any punishment that could not legally have been imposed by the service tribunal on the charges of which the offender was found guilty and in respect of which the findings have not been quashed or set aside by way of substitution;
- (b) the new punishment shall not be higher in the scale of punishments than the punishment imposed by the service tribunal in the first instance and, if the sentence passed by the service tribunal included a punishment of incarceration, the new punishment shall not involve a period of incarceration exceeding the period comprised in that sentence;
- (c) where the new punishment is detention and the punishment that it replaces is imprisonment for two years or more or imprisonment for less than two years, the term of detention from the date of alteration shall in no case exceed the term of imprisonment remaining to be served, and in any event shall not exceed a term of two years; and
- (d) where the offence of which a person has been found guilty by a service tribunal is an offence, prescribed in section sixty-four, sixty-five, sixty-six or sixty-seven, for which the punishment of death is mandatory, or in section eighty-three, for which the punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service is mandatory, or an offence to which paragraph (a) of subsection two of section one hundred and nineteen (*see article 130.61—Offences Punishable by Ordinary Law*) applies, the punishment may, subject to this section, be altered to any one or more of the punishments lower in the scale of punishments than the punishment provided for in the enactment prescribing the offence.”

(C)

114.31—EFFECT OF NEW PUNISHMENTS

The National Defence Act provides:

“176. Where under the authority of this Act, a new punishment, by reason of substitution or commutation, replaces a punishment imposed by a service tribunal,

114.31—EFFECT OF NEW PUNISHMENTS—(Cont'd)

the new punishment shall have force and effect as if it had been imposed by the service tribunal in the first instance and the provisions of the Code of Service Discipline shall apply accordingly; but where the new punishment involves incarceration, the term of the new punishment shall be reckoned from the date of substitution or commutation, as the case may be."

(C)

(114.32 TO 114.34 INCLUSIVE: NOT ALLOCATED)***Section 6—Suspension of Imprisonment or Detention*****114.35—AUTHORITY TO SUSPEND**

(1) Section one hundred and seventy-seven of *The National Defence Act* provides in part:

"177. (1) Where an offender has been sentenced to imprisonment for two years or more, imprisonment for less than two years or detention, the carrying into effect of the punishment may be suspended by the Minister, or such other authorities as he may prescribe or appoint for that purpose; and the Minister or any authority so prescribed or appointed is referred to in this section as a "suspending authority".

(2) The following shall be suspending authorities for the purposes of section one hundred and seventy-seven of *The National Defence Act*:

- (a) the Minister;
- (b) the Chief of the Naval Staff;
- (c) a senior officer in chief command; or
- (d) such other authorities as the Minister may prescribe or appoint for that purpose.

(M)

NOTES

(A) The Minister has, by article 114.55, prescribed commanding officers as additional authorities to act under this article in certain cases.

(M)

114.36—CONDITIONS APPLICABLE TO SUSPENSION

Section one hundred and seventy-seven of *The National Defence Act* provides in part:

"177. (2) Where, in the case of an offender upon whom any punishment mentioned in subsection one has been imposed, suspension of the punishment has been recommended, the authority empowered to commit the offender to a penitentiary, civil prison, service prison or detention barrack, as the case may be, may postpone committal until the directions of a suspending authority have been obtained.

(3) A suspending authority may, in the case of an offender upon whom any punishment mentioned in subsection one has been imposed, suspend the punishment whether or not the offender has already been committed to undergo that punishment.

114.36—CONDITIONS APPLICABLE TO SUSPENSION—(Cont'd)

(4) Where a punishment is suspended before the offender has been committed to undergo the punishment he shall, if in custody, be discharged from custody and the term of the punishment shall not commence until the offender has been ordered to be committed to undergo that punishment.

(5) Where a punishment is suspended after the offender has been committed to undergo the punishment, he shall be discharged from the place in which he is incarcerated and the currency of the punishment shall be arrested from the day on which he is so discharged, until he is again ordered to be committed to undergo that punishment.

(6) Where a punishment has been suspended, it may at any time, and shall at intervals of not more than three months, be reviewed by a suspending authority and if on such review it appears to the suspending authority that the conduct of the offender, since the punishment was suspended, has been such as to justify a remission of the punishment, he shall remit it.

(7) A punishment that has been suspended shall be deemed to be wholly remitted on the expiration of the period specified as the term of that punishment, unless the punishment has been put into execution prior to the expiration of that period.

(8) A suspending authority may, at any time while a punishment is suspended, direct the authority who is empowered to commit the offender to commit him, and from the date of the committal order that punishment shall cease to be suspended.

(9) Where a punishment that has been suspended under this section is put into execution, the term of the punishment shall be deemed to commence on the date upon which it is put into execution, but there shall be deducted from the term any time during which the offender has been incarcerated following pronouncement of the sentence.'

(C)

(114.37 TO 114.39 INCLUSIVE: NOT ALLOCATED)

Section 7—General Provisions Respecting Incarceration**114.40—COMMITTING AUTHORITIES**

(1) Section one hundred and seventy-eight of *The National Defence Act* provides in part: "178. (1) The Minister may prescribe or appoint authorities for the purposes of this section and any such authority is referred to in this section as a "committing authority".".

(2) The following shall be committing authorities for the purposes of section one hundred and seventy-eight of *The National Defence Act*:

- (a) the Minister;
- (b) the Chief of the Naval Staff;
- (c) a senior officer in chief command;
- (d) a commanding officer; and
- (e) such other authorities as the Minister may prescribe or appoint for the purpose.

(M)

114.41—DESIGNATION OF SERVICE PRISONS AND DETENTION BARRACKS

(1) Section one hundred and seventy-eight of *The National Defence Act* provides in part: "178. (2) Such places as are designated by the Minister for the purpose shall be service prisons and detention barracks and any hospital or other place for the

114.41—DESIGNATION OF SERVICE PRISONS AND DETENTION-BARRACKS—(Cont'd)

reception of sick persons to which a person who is a service convict, service prisoner or service detainee has been admitted shall, as respects that person, be deemed to be part of the place to which he has been committed.”.

(2) The following places shall be service prisons:

- (a) No. 12 Service Detention Barrack, Central Command, Canadian Army;
- (b) No. 25 Field Detention Barrack, 25 Canadian Infantry Brigade Group; and
- (c) No. 1 Field Detention Barrack, 1 Canadian Infantry Brigade Group.

(3) The following places shall be detention barracks:

- (a) No. 7 Service Detention Barrack, Eastern Command, Canadian Army;
- (b) No. 8 Service Detention Barrack, Eastern Command, Canadian Army;
- (c) No. 9 Service Detention Barrack, Prairie Command, Canadian Army;
- (d) No. 10 Service Detention Barrack, Western Command, Canadian Army;
- (e) No. 12 Service Detention Barrack, Central Command, Canadian Army;
- (f) No. 14 Service Detention Barrack, Quebec Command, Canadian Army;
- (g) No. 15 Service Detention Barrack, Western Command, Canadian Army;
- (h) No. 16 Service Detention Barrack, Central Command, Canadian Army;
- (i) No. 17 Service Detention Barrack, Quebec Command, Canadian Army;
- (j) No. 25 Field Detention Barrack, 25 Canadian Infantry Brigade Group; and
- (k) No. 1 Field Detention Barrack, 1 Canadian Infantry Brigade Group.

(4) When a committing authority considers that it is not practical to commit a service detainee to a detention barrack, he may commit him to a detention room (cell) for a period not in excess of thirty days, and for that purpose the detention room (cell) shall be a detention barrack. (4 Aug 55)

(M)

NOTES

- (A) When a detention room becomes a detention barrack in accordance with (4) of this article, the “Regulations for Service Prisons and Detention Barracks” apply as far as practical.
- (B) A service detainee sentenced to serve more than fourteen days is normally committed to a detention barrack designated in (3) of this article.
- (C) Paragraph (4) of this article applies even when the sentence is in excess of thirty days.

(M)

(4 Aug 55)

114.42—AUTHORITY FOR COMMITTAL AND TRANSFER

(1) Section one hundred and seventy-eight of *The National Defence Act* provides in part:

“178. (3) A committal order, in such form as is prescribed in regulations, made by a committing authority shall be a sufficient warrant for the committal of a service convict, service prisoner or service detainee to any lawful place of confinement.

(4) A committing authority may from time to time by warrant order that a service convict, service prisoner or service detainee shall be transferred from the place to which he has been committed to undergo his punishment to any other place in which that punishment may lawfully be put into execution.

114.42—AUTHORITY FOR COMMITTAL AND TRANSFER—(Cont'd)

(5) Until he is delivered to the place where he is to undergo his punishment or while he is being transferred from one such place to another such place, a service convict, service prisoner or service detainee may be held in any place, either in service custody or in civil custody or at one time in service custody and at another time in civil custody, as occasion may require, and may be transferred from place to place by any mode of conveyance, under such restraint as is necessary for his safe conduct."

(2) A committal order should be in the following form:

COMMITTAL ORDER

To:

WHEREAS.....
 (rank) (Christian names in full) (surname) (number)
 of the.....was convicted by.....
 (service) (specify service tribunal)
 of the offence(s).....
 (state all offences excluding the particulars)

 and was on the.....of....., 19...., sentenced to
 (day) (month)
 undergo.....for a term of.....;
 (imprisonment or detention)

Now, therefore, I, having been designated under and by virtue of *The National Defence Act* as a committing authority, do hereby commit the said offender to undergo

.....
 (imprisonment or detention)
 for the term of.....computed from.....
 as reduced for good conduct by virtue of the rules in effect in the place where he is from time to time to undergo that sentence;

And I do hereby, in pursuance of *The National Defence Act* and regulations made thereunder, direct and require you to receive him into your custody and detain him accordingly, and for so doing this shall be sufficient warrant.

.....
 (Signature, including rank and appointment)

Dated this.....day of.....19....

CERTIFICATE OF MEDICAL FITNESS

I certify that.....
 (rank) (Christian names in full) (surname) (number)
 is (fit)
 (fit subject to.....)
 (specify limitations)
 (unfit by reason of.....)
 (specify reasons)

114.42—AUTHORITY FOR COMMITTAL AND TRANSFER—(Cont'd)

to undergo (imprisonment).
(detention).

.....
(Date) (Medical Officer)
(M) (4 Aug 55)

NOTES

- (A) The committal order should be addressed to the warden in charge of the penitentiary or civil prison in which the offender is to be incarcerated or to the officer or non-commissioned officer in charge of a detention barrack. In the case of a term of detention for 14 days or less that will be served in cells in the ship or establishment, the committal order should be addressed to the man in immediate charge of the cells.
- (B) To determine the date from which the term of imprisonment or detention is to be computed by the person to whom the committal order is addressed the committing authority should normally specify the date that sentence was passed upon the offender. If, however, the sentence has been remitted or suspended the date to be specified must be determined by considering the effect upon the sentence of the remission or suspension (see article 114.27—"Mitigation, Commutation and Remission of Punishments" and article 114.36—"Conditions Applicable to Suspension"). When a punishment of imprisonment or detention cannot lawfully be carried out by reason of a vessel being at sea or in a port at which there is no suitable place of incarceration the committal order should specify the date from which the term is to be computed as being the date upon which the offender is received into the penitentiary, civil prison or detention barrack (see article 114.06—"Imprisonment and Detention").

(M)

114.43—COMMITTAL TO PENITENTIARIES

- (1) Section one hundred and seventy-eight of *The National Defence Act* provides in part:

"178. (6) Where a punishment of imprisonment for two years or more is to be put into execution, the service convict shall as soon as practical be committed to a penitentiary, there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service convict be committed to a service prison there to undergo his punishment or part of his punishment, and where a service convict has undergone part of his punishment in a service prison and a committing authority then orders him to be committed to a penitentiary, the service convict may be so committed notwithstanding that the unexpired portion of the term of his punishment is less than two years."

- (2) Subject to (3) of this article, when an offender is sentenced outside of Canada to undergo imprisonment for two years or more, the committing authority may order that the service convict be committed to a service prison, there to undergo such part of his punishment not exceeding two years as the committing authority may order.

- (3) When an offender, who is subject to the Code of Service Discipline under subsection (7a) of section 56 of the Act, is sentenced outside of Canada to undergo imprisonment for two years or more, the committing authority may, on the authority of the Chief of the Naval Staff, order that he be committed to a service prison, there to undergo all or such part of his punishment not exceeding two years, as the Chief of the Naval Staff may order.

(G) (P.C. 1956-606 of 19 Apr 56) (19 Apr 56)

114.44—COMMITTAL TO CIVIL PRISONS

(1) Section one hundred and seventy-eight of *The National Defence Act* provides in part:

“178. (7) Where a punishment of imprisonment for less than two years is to be put into execution, the service prisoner shall as soon as practical be committed to a civil prison there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service prisoner be committed to a service prison or detention barrack there to undergo his punishment or part of his punishment.”.

(2) Subject to (3) of this article, if the exigencies of the service make it desirable to do so, a committing authority may order that a service prisoner be committed to a service prison or detention barrack, there to undergo his punishment, or such part of his punishment as the committing authority may order.

(3) When an offender, who is subject to the Code of Service Discipline under subsection (7a) of section 56 of the Act, is sentenced outside of Canada to undergo imprisonment for less than two years, the committing authority may, on the authority of the Chief of the Naval Staff, order that he be committed to a service prison or detention barrack, there to undergo all or such part of his punishment, as the Chief of the Naval Staff may order.

(G) (P.C. 1956-606 of 19 Apr 56)

(19 Apr 56)

114.45—COMMITTAL TO DETENTION BARRACKS

Section one hundred and seventy-eight of *The National Defence Act* provides in part:

“178. (8) Where a punishment of detention is to be put into execution, the service detainee shall as soon as practical be committed to a detention barrack there to undergo his punishment.”.

(C)

114.46—TEMPORARY REMOVAL FROM INCARCERATION

The National Defence Act provides:

“179. Where the exigencies of the service so require, a service convict, service prisoner or service detainee may, by an order made by a committing authority mentioned in section one hundred and seventy-eight (*see article 114.40—“Committing Authorities”*), be removed temporarily from the place to which he has been committed for such period as may be specified in that order but, until his return to that place, he shall be retained in service custody or civil custody, as occasion may require, and no further committal order shall be necessary upon his return to that place.”.

(C)

114.47—RULES APPLICABLE TO SERVICE CONVICTS AND SERVICE PRISONERS

The National Defence Act provides:

“180. While a service convict is undergoing punishment in a penitentiary or a service prisoner is undergoing punishment in a civil prison, he shall be dealt with in

114.47—RULES APPLICABLE TO SERVICE CONVICTS AND SERVICE PRISONERS—(Cont'd)

the same manner as other prisoners in the place where he is undergoing punishment, and all rules applicable in respect of a person sentenced by a civil court to imprisonment in a penitentiary or civil prison, as the case may be, shall in so far as circumstances permit, apply accordingly; but a service convict undergoing punishment in a penitentiary or a service prisoner undergoing punishment in a civil prison shall not be discharged therefrom until the expiration of the term of his punishment, as reduced for good conduct by virtue of any rules in effect in that penitentiary or civil prison, unless an authority mentioned in section one hundred and seventy-four (*see article 114.27—"Mitigation, Commutation and Remission of Punishments"*) or section one hundred and seventy-seven (*see article 114.35 and 114.36—"Suspension of Imprisonment or Detention"*), orders that he be discharged therefrom prior to the expiration of the term of his punishment."

(C)

114.48—AUTHORITY OF DOCUMENTS RESPECTING INCARCERATION

The National Defence Act provides:

"181. The custody of a service convict, service prisoner or service detainee is not illegal by reason only of informality or error in or in respect of a document containing a warrant, order or direction issued in pursuance of this Act, or by reason only that such document deviates from the prescribed form; and any such document may be amended appropriately at any time by the authority who issued it in the first instance or by any other authority empowered to issue documents of the same nature."

(C)

114.49—INSANITY WHILE IN PENITENTIARIES OR OTHER PRISONS

The National Defence Act provides:

"182. A service convict or service prisoner who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a penitentiary or a civil prison, shall be treated in the same manner as if he were a person undergoing a term of imprisonment in such penitentiary or civil prison by virtue of the sentence of a civil court."

(C)

114.50—INSANITY WHILE IN DETENTION BARRACKS

The National Defence Act provides:

"183. A service convict, service prisoner or service detainee who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a service prison or detention barrack, may, in the discretion of the commanding officer of that service prison or detention barrack, be made available to the Lieutenant Governor of the province in which the service prison or detention barrack is situated, in order that he may be treated in the manner provided for in section nine hundred and seventy of the *Criminal*

114.50—INSANITY WHILE IN DETENTION BARRACKS—(Cont'd)

Code, and, pending action under that section, he shall be kept in strict custody until his case has been disposed of under that section, whether or not his term of imprisonment or detention has expired."

(G)

(114.51 TO 114.54 INCLUSIVE: NOT ALLOCATED)

Section 8—Commanding Officers**114.55—POWER TO QUASH FINDINGS AND ALTER FINDINGS AND SENTENCES**

(1) Subject to (2) of this article, a commanding officer shall be an authority having power to act under article 114.15 (*Quashing of Findings*), 114.17 (*Substitution of Findings*), 114.25 (*Illegal Punishments*), 114.27 (*Mitigation, Commutation and Remission of Punishments*) and 114.35 (*Authority to Suspend*) in respect of findings made or punishments imposed at a summary trial of an accused person who is under his command.

(2) No commanding officer shall have power under (1) of this article in respect of the finding or punishment if the punishment proposed for the offence has been submitted for the approval of higher authority (*see article 108.40—"Submission for Approval of Punishment"*) unless the concurrence of the authority to whom the punishment has been submitted for approval is first obtained.

(M)

NOTES

(A) Under this article, a commanding officer could quash or alter findings made or remit, alter or suspend punishments imposed by himself, another commanding officer, or a delegated officer.

(M)

(114.56 TO 114.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 115

APPEALS FROM COURT MARTIAL

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter)

115.01—RIGHT TO APPEAL

The National Defence Act provides:

“184. For the purposes of this Part, the expressions “legality” and “illegal”, shall be deemed to refer either to questions of law alone or to questions of mixed law and fact.

186. Every person who has been tried and found guilty by a court martial shall, subject to subsection three of section one hundred and eighty-eight, have a right to appeal in respect of any or all of the following matters.

- (a) the severity of the sentence;
- (b) the legality of any or all of the findings; or
- (c) the legality of the whole or any part of the sentence.”

(C)

NOTES

- (A) An appeal under paragraph (a) of section 186 of *The National Defence Act*, founded solely on the severity of the sentence, will not be dealt with by the Court Martial Appeal Board provided for in this chapter but will invariably be disposed of by service authorities having power under chapter 114 to mitigate, commute and remit punishments. An appeal under paragraph (b) or (c) of section 186 of *The National Defence Act*, relating to a question of legality, may be allowed by service authorities but cannot be denied by them. If not allowed by service authorities, it must be referred to the Court Martial Appeal Board.

(M)

115.02—ENTRY OF APPEALS

- (1) *The National Defence Act* provides:

“188. (1) An appeal under this Part shall be stated on a form to be known as a Statement of Appeal which shall contain particulars of the grounds upon which the appeal is founded and shall be signed by the appellant.

(2) A Statement of Appeal shall not be invalid by reason only of information or the fact that it deviates from the prescribed form.

(3) No appeal under this Part shall be entertained unless the Statement of Appeal is delivered to a superior officer or to any person by whom the appellant is held in custody

- (a) within fourteen days after delivery to the offender, pursuant to section one hundred and sixty-eight, of a copy of the minutes of the proceedings and of the form of the Statement of Appeal; or
- (b) where the finding or sentence in respect of which the offender intends to enter an appeal has been altered under section one hundred and seventy, one hundred and seventy-two, one hundred and seventy-three or one hundred and seventy-four, within fourteen days after the date upon which notice of such alteration is given to the offender.

115.02—ENTRY OF APPEALS—(Cont'd)

(4) All Statements of Appeal shall be forwarded to the Judge Advocate General."

(2) Every Statement of Appeal shall contain the ground or grounds of the appeal, described in terms indicating clearly which of the matters prescribed in paragraphs (a), (b) and (c) of section one hundred and eighty-six of *The National Defence Act* constitutes the grounds, and shall include sufficiently detailed particulars of those grounds to indicate the circumstances and principles upon which the appellant relies. It should be in the following form:—

STATEMENT OF APPEAL

This form was delivered by me to.....
(rank, initial, surname and number of offender)
.....on the.....day of.....19....at.....
(place delivered)
.....

.....
(signature of person delivering this form to offender)

.....
(number and unit or, if civilian, position and address)

(An offender who desires to appeal *must*

- (a) complete this form;
- (b) give, under the word "particulars" in all spaces applicable, full details of the circumstances upon which he relies; and
- (c) within 14 days after the date entered above, deliver the completed form to a superior officer or to any person by whom he is held in custody.)

1. I,
(rank) (surname) (Christian names in full) (number)
having been found guilty by a court martial held at.....
on the.....day of.....19...., hereby appeal in
respect of the following matters:

- (a) the severity of the sentence.....
(Answer "Yes" or "No")

PARTICULARS

115.02—ENTRY OF APPEALS—(Cont'd)

- (b) the legality of any or all of the findings.....
(Answer "Yes" or "No")

If "Yes", specify the charge(s) to which appeal relates:

PARTICULARS:

- (c) the legality of the whole or any part of the sentence:

.....
(Answer "Yes" or "No")

If "Yes" specify the punishment(s) to which appeal relates:

PARTICULARS:

2. (If applicable) The following is the name and address of the lawyer who will represent me on my appeal:

.....

3. (When appellant has been released from the service) The following is the address at which notices and other documents may be served upon me:

.....

.....
(witness)

.....
(signature)

(To be completed if Statement of Appeal received from offender)

This form was delivered to me, duly completed by.....
(rank, initial, surname and number of offender)

.....on the.....day of.....

19...., at.....
(place where delivered)

.....
(signature of person receiving this form from offender)

.....
(number and unit or, if civilian, position and address)

(On completion, this form shall be mailed by Registered Post, by the person to whom it is delivered by the appellant, to: Judge Advocate General, National Defence Headquarters, Ottawa, Canada.)

(M) (NS 4255-5) (26 Feb 52)

NOTE

(A) If the accused so requests, any defending officer assigned to him at the trial should be made available to assist in preparing his statement of appeal.

(M)

115.03—PRELIMINARY DISPOSITION OF APPEALS

The National Defence Act provides:

“189. (1) Where an appeal relates only to the severity of the sentence, mentioned in paragraph (a) of section one hundred and eighty-six, the Judge Advocate General shall forward the statement of Appeal to an authority who, under section one hundred and seventy-four, has power to mitigate, commute or remit punishments and that authority may dismiss the appeal or, subject to Part VIII, may mitigate, commute or remit the punishments comprised in the sentence.

(2) Where an appeal relates to the legality of the findings, as mentioned in paragraph (b) of section one hundred and eighty-six, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board provided for in this Part, unless the appropriate chief of staff, acting on the certificate of the Judge Advocate General that all of the findings in respect of which an appeal has been made are illegal, quashes such findings.

(3) Where an appeal relates to the legality of the sentence, mentioned in paragraph (c) of section one hundred and eighty-six, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board, unless the Judge Advocate General certifies that there is no finding in respect of which any sentence could legally be passed, in which case the sentence shall be null and void.”

(C)

115.04—DISPOSITION OF STATEMENT OF APPEAL

(1) A statement of appeal completed by a person in custody shall be given to the commanding officer of the ship, establishment or other place where the appellant is held or, if the appellant is held in civil gaol, to the warden, and the commanding officer or warden shall forthwith forward the statement of appeal direct to the Judge Advocate General.

(2) Upon receipt of the proceedings of the Court Martial, the Judge Advocate General shall, if the finding or sentence have been altered in any way pursuant to Chapter 114, (*Provisions Applicable to Finding and Sentences after Trial*), at once advise the accused of the nature and effect of such alteration and ascertain whether he wishes to abandon his appeal or amend his statement of appeal.

(3) Unless, within 14 days of receipt of such notice from the Judge Advocate General, the accused advises the Judge Advocate General that he wishes to abandon his appeal or submits to the Judge Advocate General an amended statement of appeal, the Judge Advocate General shall proceed to deal with the appeal as required by *The National Defence Act*.

(M)

115.05—COURT MARTIAL APPEAL BOARD

The National Defence Act provides:

“190. (1) There shall be a Court Martial Appeal Board which shall hear and determine all appeals referred to it under this Part.

(2) The Court Martial Appeal Board shall consist of the following members:

115.05—COURT MARTIAL APPEAL BOARD—(Cont'd)

- (a) a Chairman, who shall be a judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the *Criminal Code*; and
- (b) two or more other persons each of whom shall be a judge or retired judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the *Criminal Code*, or a barrister or advocate of not less than five years standing.

all of whom shall be appointed by the Governor in Council.

(3) The Chairman of the Court Martial Appeal Board shall preside at sittings of the Board, unless he appoints another member to be the presiding member in his place.

(4) The Minister may require the Court Martial Appeal Board to sit and hear appeals at any place or places, and the Chairman of the Board shall arrange for sittings and hearings accordingly.

(5) Three members of the Court Martial Appeal Board shall be a quorum, and the decision in any appeal shall be determined by the vote of the majority of the members present, and in the event of an equality of votes, the Chairman or other presiding member shall have a second or casting vote.

(6) Where an appeal has been wholly or partially dismissed by the Court Martial Appeal Board, and there has been dissent in the Board, the appellant shall forthwith be informed of that dissent.

(7) The Court Martial Appeal Board may hear evidence including new evidence, as it may deem expedient, and the Board may sit in camera or in public, and for the performance of its duties shall have all of the powers vested in commissioners under Part I of the *Inquiries Act*.

(8) The members of the Court Martial Appeal Board shall be paid such fees and allowances as may be prescribed by the Governor in Council."

(C)

115.05—COURT MARTIAL APPEAL BOARD—(Cont'd)

NOTES

(A) With reference to the paragraph (7), sections 4 and 5 of the *Inquiries Act* provide as follows:

“4. The commissioners shall have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine. R.S., c. 104, s. 4.

5. The commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases. R.S., c. 104, s. 5.”

(M)

115.06—DISPOSITION OF APPEALS BY COURT MARTIAL APPEAL BOARD

(1) *The National Defence Act* provides:

“191. (1) Upon the hearing of an appeal respecting the legality of a finding of guilty on any charge, the Court Martial Appeal Board, if it allows the appeal, shall

(a) set aside the finding and direct a finding of not guilty to be recorded in respect of that charge; or

(b) direct a new trial on that charge, in which case the appellant shall be tried again as if no trial on that charge had been held.

(2) Where the Court Martial Appeal Board has set aside a finding of guilty and no other finding of guilty remains, the whole of the sentence shall cease to have force and effect.

(3) Where the Court Martial Appeal Board has set aside a finding of guilty but another finding of guilty remains, the Board shall forthwith refer the proceedings to the Minister, or to such other authority as he may prescribe or appoint for that purpose, who shall, subject to section one hundred and seventy-five, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court martial shall thereupon cease to have force and effect; and section one hundred and seventy-six shall apply to the new punishment or punishments.

192. Upon the hearing of an appeal respecting the legality of a sentence passed by a court martial, the Court Martial Appeal Board, if it allows the appeal, shall forthwith refer the proceedings to the Minister, or to such other authority as the Minister may prescribe or appoint for that purpose, who shall, subject to section one hundred and seventy-five, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court martial shall thereupon cease to have force and effect; and section one hundred and seventy-six shall apply to the new punishment or punishments.

193. Notwithstanding anything in this Part, the Court Martial Appeal Board may disallow an appeal if, in the opinion of the Board, to be expressed in writing, there has been no substantial miscarriage of justice.

194. Where a punishment included in a sentence has been dealt with pursuant to subsection three of section one hundred and ninety-one or section one hundred and ninety-two, the new punishment shall be subject to mitigation, commutation, remission or suspension in the same manner and to the same extent as if it had been passed by the court martial that tried the appellant.”

115.06—DISPOSITION OF APPEALS BY COURT MARTIAL APPEAL BOARD —(Cont'd)

(2) The Minister and the authorities mentioned in article 114.25—(*“Illegal Punishments”*) are empowered to act under subsection three of section one hundred and ninety-one and under section one hundred and ninety-two of *The National Defence Act*.

(3) Where, under paragraph (b) of subsection one of section one hundred and ninety-one of *The National Defence Act*, the Court Martial Appeal Board has directed a new trial on a charge, the Chief of the Naval Staff shall convene a court martial for the trial of the appellant on that charge.

(M)

115.07—RULES OF APPEAL PROCEDURE

The National Defence Act provides:

“195. (1) The Chairman of the Court Martial Appeal Board, with the approval of the Governor in Council, may make rules not inconsistent with this Act respecting,

- (a) the seniority of members of the Board for the purpose of presiding at appeals;
- (b) the practice and procedure to be observed at hearings;
- (c) the conduct of appeals;
- (d) the production of the minutes of the proceedings of any court martial in respect of which an appeal is taken;
- (e) the production of all other documents and records relating to an appeal;
- (f) the extent to which new evidence may be introduced;
- (g) the circumstances in which the appellant may attend or appear before the Board on the hearing of his appeal, but no such rule shall deprive an appellant of the right to be present on the hearing of his appeal from a sentence of death; and
- (h) provision for and payment of fees of counsel for the appellant.

(2) No rule made under this section shall have effect until it has been published in the *Canada Gazette*.”

(C)

NOTES

(A) The Rules of Appeal Procedure appear as appendix to KRCN.

(M)

115.08—APPEAL TO SUPREME COURT OF CANADA

The National Defence Act provides:

“196. (1) A person whose appeal has been wholly or partially dismissed by the Court Martial Appeal Board may, where there has been dissent in the Board, appeal to the Supreme Court of Canada with leave of the Attorney General of Canada.

(2) An application for leave to appeal under subsection one shall be delivered to the Attorney General of Canada within thirty days of notice to the appellant of the decision of the Court Martial Appeal Board.

115.08—APPEAL TO SUPREME COURT OF CANADA—(Cont'd)

(3) The Supreme Court of Canada shall, in respect of the hearing and determination of an appeal under this section, have the same powers, duties and functions as the Court Martial Appeal Board has under this Act, and sections one hundred and ninety-one to one hundred and ninety-four shall apply with such adaptations and modifications as the circumstances may require."

(C)

NOTES

(A) The expression "where there has been dissent in the Board" means that the final decision of the Board is not unanimous. Disagreement among the members on a particular issue or a variation in reasons for arriving at a decision do not amount to "dissent" if the final decision of the Board as to disposition of the appeal is unanimous.

(M)

115.09—SAVING PROVISIONS

The National Defence Act provides:

"185. Nothing in this Part shall be in derogation of the powers conferred under Part VIII to quash findings or alter findings and sentences.

187. The right of any person to appeal from the finding or sentence of a court martial shall be deemed to be in addition to and not in derogation of any rights that he has under the law of Canada."

(C)

(115.10 TO 115.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 116

REVIEW OF COURTS MARTIAL

*(Refer carefully to article 1.02 (Definitions)
when reading every regulation in this chapter.)*

116.01—REVIEW OF COURTS MARTIAL BY JUDGE ADVOCATE GENERAL

(1) *The National Defence Act* provides:

“197. Upon the expiration of the period mentioned in subsection three of section one hundred and eighty-eight within which an appeal may be made, the proceedings of every court martial shall be reviewed by the Judge Advocate General in respect of any matter mentioned in paragraph (b) or (c) of section one hundred and eighty-six on which an appeal has not been made.”

(C)

NOTES

(A) The “period mentioned in Section 188(3)” is fourteen days after the offender receives a copy of the minutes of the proceedings or fourteen days after he has been notified that the finding or sentence has been altered.

(B) The “matter mentioned in Section 186 (b) or (c)” is the legality of any or all of the findings or the legality of the whole or any part of the sentence.

(M)

**116.02—PROCEDURE WHEN JUDGE ADVOCATE GENERAL CERTIFIES
ILLEGALITY EXISTS**

The National Defence Act provides:

“198. Where, upon the review mentioned in section one hundred and ninety-seven (*see article 116.01*), the Judge Advocate General certifies that any finding or punishment is illegal, he shall refer the minutes of the proceedings of the court martial to the appropriate chief of staff for such action under this Act as that chief of staff may deem fit.”

(C)

NOTES

(A) For the action which may be taken by the Chief of the Naval Staff, see articles 114.15 (*Quashing of Findings*), 114.17 (*Substitution of Findings*), and 114.25 (*Illegal Punishments*).

(M)

(116.03 TO 116.99 INCLUSIVE: NOT ALLOCATED)

CHAPTER 117

PETITION FOR NEW TRIAL

(Refer carefully to article 1.02 (Definitions) when reading every regulation in this chapter.)

117.01—STATUTORY PROVISION FOR NEW TRIAL

- (1) Section one hundred and ninety-nine of *The National Defence Act* provides in part:

“199. (1) Every person who has been tried and found guilty by a court martial shall have a right to petition for a new trial on grounds of new evidence discovered subsequent to his trial.

(2) No petition under this section shall be entertained unless it is delivered to an officer designated for that purpose in regulations

(a) within one year after the date of the pronouncement of the finding; or

(b) within one year after any punishment of incarceration, undergone by the petitioner in consequence of his trial, has been carried out,

whichever is the latter.”

- (2) A petition made under (1) of this article shall be delivered by the person making the petition to his commanding officer or to any person by whom he is held in custody.

(M)

117.02—DISPOSITION OF PETITION

- (1) Section one hundred and ninety-nine of *The National Defence Act* provides in part:

“199. (3) Every petition under this section shall be forwarded to the Judge Advocate General who shall refer the petition with his recommendation to the appropriate chief of staff who, if he is of the opinion that the petition should be granted, shall order a new trial, in which case the petitioner shall be tried again as if no trial had been held.

(4) When a new trial is held pursuant to subsection three and the petitioner is found guilty the sentence passed at the original trial shall be restored and shall have force and effect as if the new trial had not been ordered.”

- (2) When the Chief of the Naval Staff orders a new trial under (1) of this article, he shall convene:

(a) a General Court Martial if the accused was previously tried by a General Court Martial; and

(b) a Disciplinary Court Martial in any other case.

(M)

NOTES

- (A) Nothing in this article precludes the Chief of the Naval Staff from exercising his powers under article 114.15 (*Quashing of Findings*).

(M)

(117.03 TO 117.99 INCLUSIVE: NOT ALLOCATED)

APPENDIX XI
THE NATIONAL DEFENCE ACT

*Chapter 184 of the
Revised Statutes of Canada*

As amended by

R.S.C. 1952, c. 310

1952-53, c. 6

1952-53, c. 24

1953-54, cc. 13, 21, 40

1955, c. 28

1956, c. 18

THE NATIONAL DEFENCE ACT

ARRANGEMENT AND CONTENTS

	PAGE
Short title.....	1
Interpretation.....	1
FIRST DIVISION	
ORGANIZATION FOR DEFENCE	
<i>PART I—Department of National Defence—</i>	
Provision for Department.....	4
Minister.....	4
Deputy Minister.....	5
Civilian employees.....	6
Judge Advocate General.....	6
Materiel.....	6
Inventions.....	6
Regulations.....	7
<i>PART II—The Canadian Forces—</i>	
Constitution.....	7
Units and other elements.....	8
Chiefs of staff.....	9
Powers of command.....	9
Enrolment.....	10
Attachment and secondment.....	11
Promotion.....	11
Redress of grievances.....	11
Release.....	12
Active service.....	12
Service.....	13
Pay and allowances.....	13
Supply and issue of materiel.....	14
Public property.....	14
Non-public property.....	14
Service estates.....	15
Presumption of death.....	16
Personal effects of absentees.....	16
Boards of inquiry.....	16
Cadet organizations.....	16
Educational institutions.....	16
Service associations.....	17
Exercise of authority.....	17
Notification of orders.....	17
Validity of documents.....	18
<i>PART III—The Defence Research Board.....</i>	18

(Table of Contents)

SECOND DIVISION

CODE OF SERVICE DISCIPLINE

	PAGE
<i>PART IV—Disciplinary Jurisdiction of the Services—</i>	
Application	20
Persons in Canadian Forces	21
Persons accompanying Canadian Forces	22
Spies for the enemy	22
Released persons serving sentence	22
Persons under special engagement	22
Women	23
Plea in bar of trial	23
Place of commission of offence	23
Place of trial	23
Period of liability under Code of Service Discipline	23
Limitations with respect to certain offences	23
Jurisdiction of civil courts	24
<i>PART V—Service Offences and Punishments—</i>	
Responsibility for offences	24
Misconduct of commanders in presence of enemy	24
Misconduct of any person in presence of enemy	25
Security	25
Prisoners of war	26
Miscellaneous operational offences	26
Spies for the enemy	27
Mutiny	27
Seditious offences	27
Insubordination	28
Desertion	28
Absence without leave	29
Disgraceful conduct	30
Offences in relation to service arrest and custody	31
Offences in relation to vessels	31
Offences in relation to aircraft	32
Offences in relation to vehicles	33
Offences in relation to property	33
Offences in relation to service tribunals	35
Offences in relation to billeting	36
Offences in relation to enrolment	36
Miscellaneous offences	37
Conduct to the prejudice of good order and discipline	37
Offences punishable by ordinary law	38
Conviction of cognate offence	39
Punishments	40
Less punishment	40
Death	40
Imprisonment	41
Dismissal with disgrace	41
Detention	42
Reduction in rank	42
Forfeiture of seniority	42
Dismissal from ship	42
Fine	42
Minor punishments	43
Limitation	43
Sentences	43
Incarceration under more than one sentence	43
Ignorance of law	43
Civil defences	43
Insanity as a defence	43
<i>PART VI—Arrest—</i>	
Authority to arrest	44
Action following arrest	45
Limitations in respect of custody	46

(Table of Contents)

	PAGE
<i>PART VII—Service Tribunals—</i>	
Application.....	46
Investigation and preliminary disposition of charges.....	47
Summary trials by commanding officers.....	47
Summary trials by superior commanders.....	48
Convening of Courts Martial.....	49
General Courts Martial.....	49
Disciplinary Courts Martial.....	50
Standing Courts Martial.....	51
Representation of accused.....	51
Admission to courts martial.....	52
Rules of evidence.....	52
Witnesses at courts martial.....	53
Evidence of commission.....	53
View by court martial.....	54
Objection to members of courts martial.....	54
Oaths at courts martial.....	54
Adjournment and dissolution.....	55
Amendment of charges.....	55
Decisions by courts martial.....	56
Similar offences.....	56
Pronouncement of findings and sentence.....	56
Recommendation to clemency.....	56
Decision where accused insane at trial.....	57
Decision where accused insane when offence committed.....	58
Minutes of proceedings of courts martial.....	58
<i>PART VIII—Provisions Applicable to Findings and Sentences After Trial—</i>	
Imprisonment and detention.....	58
Punishments requiring approval.....	59
Quashing of findings.....	60
Substitution of findings.....	60
Substitution of punishments.....	60
Mitigation, commutation and remission of punishments.....	60
Conditions applicable to new punishments.....	61
Effect of new punishments.....	61
Suspension of imprisonment or detention.....	62
Committal to imprisonment or detention.....	63
Temporary removal from incarceration.....	64
Rules applicable to service convicts and service prisoners.....	64
Validity of documents.....	64
Insanity during imprisonment or detention.....	64
Transfer of Offenders.....	65
<i>PART IX—Appeal, Review and Petition—</i>	
General provisions.....	65
Right to appeal.....	66
Entry of appeals.....	66
Preliminary disposition of appeals.....	66
Court Martial Appeal Board.....	67
Disposition of appeals by Court Martial Appeal Board.....	68
Rules of appeal procedure.....	69
Appeal to Supreme Court of Canada.....	70
Review after expiration of right to appeal.....	70
Petition for new trial.....	71
 THIRD DIVISION	
 GENERAL LAWS RESPECTING DEFENCE	
<i>PART X—Miscellaneous Provisions Having General Application—</i>	
Witnesses and counsel at courts martial.....	71
Disposal by civil authorities of deserters and absentees without leave.....	72
Certificate of civil courts.....	73
Duties respecting incarceration.....	73
Manœuvres.....	74
Emergency powers in relation to property.....	74

(Table of Contents)

	PAGE
Exemptions from tolls.....	75
Ships in convoy.....	75
Salvage.....	75
Government Vessels Discipline Act.....	76
Limitation of civil liabilities.....	76
Compensation.....	77
<i>PART XI—Aid of the Civil Power.....</i>	<i>78</i>
<i>PART XII—Offences Triable by Civil Courts—</i>	
Application.....	82
Offences.....	82

National Defence Act

CHAPTER 184.

An Act respecting National Defence.

SHORT TITLE.

1. This Act may be cited as the *National Defence Act*. 1950, c. 43, s. 1. Short title.

INTERPRETATION.

2. In this Act and in regulations made hereunder, Definitions.
- (1) "aircraft" means flying machines and guided missiles that derive their lift in flight chiefly from aerodynamic forces, and flying devices that are supported chiefly by their buoyancy in air, and includes any aeroplane, balloon, kite balloon, airship, glider or kite; "Aircraft."
- (2) "aircraft material" means engines, fittings, armament, ammunition, bombs, missiles, gear, instruments and apparatus, used or intended for use in connection with aircraft or the operation thereof, and components and accessories of aircraft and substances used to provide motive power or lubrication for or in connection with aircraft or the operation thereof; "Aircraft material."
- (3) "civil court" means a court of ordinary criminal jurisdiction in Canada and includes a court of summary jurisdiction; "Civil court."
- (4) "civil custody" means the holding under arrest or in confinement of a person by the police or other competent civil authority, and includes confinement in a penitentiary or a civil prison; "Civil custody."
- (5) "civil prison" means any prison, gaol or other place in Canada in which offenders sentenced by a civil court in Canada to imprisonment for less than two years can be confined, and, if sentenced out of Canada, any prison, gaol or other place in which a person, sentenced to that term of imprisonment by a civil court having jurisdiction in the place where the sentence was passed, can for the time being so confined; "Civil prison."
- (6) "Code of Service Discipline" means the provisions of Parts IV, V, VI, VII, VIII and IX; "Code of Service Discipline."
- (7) "court martial" includes a General Court Martial, a Disciplinary Court Martial and a Standing Court Martial; "Court martial."

National Defence Act

- "Defence establishment." (8) "defence establishment" means any area or structure under the control of the Minister, and the material and other things situate in or on any such area or structure;
- "Department." (9) "Department" means the Department of National Defence;
- "Deputy Minister." (10) "Deputy Minister" means the Deputy Minister of National Defence;
- "Detention barrack." (11) "detention barrack" means a place designated as such under subsection (2) of section 178;
- "Emergency." (12) "emergency" means war, invasion, riot or insurrection, real or apprehended;
- "Enemy." (13) "enemy" includes armed mutineers, armed rebels, armed rioters and pirates;
- "Enrol." (14) "enrol" means to cause any person to become a member of the Canadian Forces;
- "Her Majesty's Canadian Ship." (15) "Her Majesty's Canadian Ship" means any vessel of the Royal Canadian Navy commissioned as a vessel of war;
- "Her Majesty's Forces." (16) "Her Majesty's Forces" means the naval, army and air forces of Her Majesty wheresoever raised, and includes the Canadian Forces;
- "Man." (17) "man" means any person, other than an officer, who is enrolled in, or who pursuant to law is attached or seconded otherwise than as an officer to, the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;
- "Materiel." (18) "materiel" means all movable public property, other than money, provided for the Canadian Forces or the Defence Research Board or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided;
- "Military." (19) "military" shall be construed as relating to all or any of the Services of the Canadian Forces;
- "Minister." (20) "Minister" means the Minister of National Defence;
- "Mutiny." (21) "mutiny" means collective insubordination or a combination of two or more persons in the resistance of lawful naval, army or air force authority in any of Her Majesty's Forces or in any forces co-operating therewith;
- "Non-public property." (22) "non-public property" means
 (a) all money and property, other than issues of materiel, received for or administered by or through messes, institutes or canteens of the Canadian Forces,
 (b) all money and property contributed to or by officers, men, units or other elements of the Canadian Forces for the collective benefit and welfare of such officers, men, units or other elements,
 (c) by-products and refuse and the proceeds of the sale thereof to the extent prescribed under subsection (5) of section 39, and

National Defence Act

- (d) all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for money and property described in paragraphs (a), (b) and (c);
- (23) "officer" means "Officer."
 (a) a person who holds Her Majesty's commission in the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force,
 (b) a subordinate officer in the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force, and
 (c) any person who pursuant to law is attached or seconded as an officer to the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;
- (24) "penitentiary" means a penitentiary established under the *Penitentiary Act* and includes, in respect of any punishment of imprisonment for two years or more imposed out of Canada pursuant to the Code of Service Discipline, any prison or place in which a person sentenced to imprisonment for two years or more by a civil court having jurisdiction in the place where the sentence is imposed, can for the time being be confined; and if in any such place out of Canada there is no prison or place for the confinement of persons sentenced to imprisonment for two years or more, then in that case "penitentiary" means a civil prison; "Penitentiary."
- (25) "personal equipment" means all materiel issued to an officer or man for his personal wear or other personal use; "Personal equipment."
- (26) "possession" by any person, for the purpose of the Code of Service Discipline and Part XII, includes "Possession."
 (a) having in his own personal possession,
 (b) knowingly having in the actual possession or custody of any other person, or
 (c) knowingly having in any place, whether belonging to or occupied by himself or not, for the use or benefit of himself or any other person;
- (27) "public property" means all money and property of Her Majesty in right of Canada; "Public property."
- (28) "regulations" means regulations made under this Act; "Regulations."
- (29) "release" means the termination of the service of an officer or man in any manner whatsoever; "Release."
- (30) "service convict" means a person who is under a sentence that includes a punishment of imprisonment for two years or more imposed upon him pursuant to the Code of Service Discipline; "Service convict."
- (31) "service custody" means the holding under arrest or in confinement of a person by the Canadian Forces, and includes confinement in a service prison or detention barrack; "Service custody."

National Defence Act

- "Service detainee." (32) "service detainee" means a person who is under a sentence that includes a punishment of detention imposed upon him pursuant to the Code of Service Discipline;
- "Service offence." (33) "service offence" means an offence under this Act, the *Criminal Code*, or any other Act of the Parliament of Canada, committed by a person while subject to the Code of Service Discipline;
- "Service prison." (34) "service prison" means a place designated as such under subsection (2) of section 178;
- "Service prisoner." (35) "service prisoner" means a person who is under a sentence that includes a punishment of imprisonment for less than two years imposed upon him pursuant to the Code of Service Discipline;
- "Service tribunal." (36) "service tribunal" means a court martial or a person presiding at a summary trial;
- "Summary trial." (37) "summary trial" means a trial conducted by or under the authority of a commanding officer pursuant to section 136 and a trial by a superior commander pursuant to section 137;
- "Superior officer." (38) "superior officer" means any officer or man who, in relation to any other officer or man, is by this Act, or by regulations or by custom of the service, authorized to give a lawful command to that other officer or man;
- "Unit." (39) "unit" means an individual body of the Canadian Forces that is organized as such pursuant to section 18, with the personnel and materiel thereof. 1950, c. 43, s. 2.

PART I.

DEPARTMENT OF NATIONAL DEFENCE.

PROVISION FOR DEPARTMENT

Formation
of depart-
ment.

3. There shall be a department of the Government of Canada called the Department of National Defence over which the Minister of National Defence appointed by the Governor General by commission under the Great Seal shall preside. 1950, c. 43, s. 3.

MINISTER.

Duties.

4. The Minister has the control and management of the Canadian Forces, the Defence Research Board and of all matters relating to national defence including preparation for civil defence against enemy action, and is responsible for the construction and maintenance of all defence establishments and works for the defence of Canada. 1950, c. 43, s. 4.

National Defence Act

5. The Governor in Council, upon the recommendation of the Minister, ^{Exercise of powers.} may from time to time designate any other person in addition to the Minister to exercise any power or perform any duty or function that is vested in or that may be exercised or performed by the Minister under this Act. 1950, c. 43, s.5.

6. (1) The Governor General may, during an emergency, by commission ^{Additional or Associate Ministers.} under the Great Seal appoint

(a) not more than three additional Ministers of National Defence, each of whom shall exercise and perform such of the powers, duties and functions of the Minister as may be prescribed by the Governor in Council, or

(b) not more than three Associate Ministers of National Defence, each of whom shall exercise and perform such of the powers, duties and functions of the Minister as may be assigned to him by the Governor in Council or the Minister.

(2) Each additional or Associate Minister appointed under this section ^{Term of office.} may be continued in office for not more than six months after the termination of the emergency during which he is appointed. 1950, c. 43, s. 6.

6A. The Governor General may at any time by commission under the ^{Associate Minister. New. 1952-53, c. 6, s. 2.} Great Seal appoint an Associate Minister of National Defence who shall exercise and perform such of the powers, duties and functions of the Minister as may be assigned to him by the Governor in Council; during the period that a ^{Am. 1953-54 c. 21, s. 3.} person holds office as Associate Minister of National Defence under this section, the number of Associate Ministers of National Defence who may be appointed under section 6 shall be reduced by one.

DEPUTY MINISTER.

7. (1) There shall be a Deputy Minister of National Defence who shall ^{Appointment.} be appointed by the Governor in Council.

(2) Where one or more additional Ministers or Associate Ministers are ^{Additional Deputy Ministers.} appointed under section 6, the Governor in Council may appoint an additional Deputy Minister for each such additional Minister or Associate Minister. 1950, c. 43, s. 7.

8. (1) The Governor in Council may appoint not more than three ^{Associate Deputy Ministers.} persons to be Associate Deputy Ministers of National Defence.

(2) During an emergency, the Governor in Council may appoint additional ^{Additional Associate Deputy Ministers.} Associate Deputy Ministers.

(3) Each Associate Deputy Minister has the rank and status of a deputy head of a department and as such shall, under the direction of the Minister and of the Deputy Minister, perform such duties and exercise such authority as deputy of the Minister and otherwise, as may be assigned to him by the Minister. 1950, c. 43, s. 8. ^{Duties of Associate Deputy Ministers}

National Defence Act

CIVILIAN EMPLOYEES.

Appointment.

9. Such officers, clerks and employees as are necessary for carrying on the business of the Department may be appointed in the manner authorized by law. 1950, c. 43, s. 9.

JUDGE ADVOCATE GENERAL.

Appointment.

10. (1) The Governor in Council may appoint a barrister or advocate of not less than ten years standing to be the Judge Advocate General of the Canadian Forces.

Exercise of powers of Judge Advocate General.

(2) The powers, duties and functions of the Judge Advocate General may be exercised by such other person as the Minister may authorize to act for the Judge Advocate General for that purpose. 1950, c. 43, s. 10.

MATERIEL.

Delivery of materiel for sale.

Rep. and New. 1953-54, c. 13, s. 8(1).

11. (1) The Governor in Council may authorize the Minister to deliver to any department or agency of the Government of Canada any materiel that has not been declared surplus and is not immediately required for the use of the Canadian Forces or the Defence Research Board or for any other purpose under the Act, for sale to such countries or international welfare organizations on such terms as the Governor in Council may determine.

Application of proceeds.

(2) The proceeds of a sale of materiel delivered under subsection (1) shall be paid into a special account in the Consolidated Revenue Fund and, subject to the approval of the Governor in Council, shall be used for the procurement of materiel; and payments out of the special account shall be made by the Minister of Finance on the requisition of the Minister.

Annual statement.

(3) The Minister shall within three months after the termination of each fiscal year prepare a statement of the moneys received and disbursed under this section during that year, indicating the balance, if any, remaining at the end of that year in the special account mentioned in subsection (2).

Tabling in Parliament.

(4) The Minister shall forthwith lay the statement mentioned in subsection (3) before Parliament or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session. 1950, c. 43, s. 11.

Refund of taxes.

New. 1953-54, c. 13, s. 8(2).

(5) Where any taxes or duties imposed under the laws of Canada have been paid, out of any appropriation for the Department, on or in respect of any materiel sold under this section, and all or part of such taxes or duties was not recovered from the purchaser, there shall be credited to the special account established under this section an amount equal to the unrecovered taxes or duties as determined by the Minister of National Revenue.

12. (Repealed by R.S.C. 1953-54, c. 40, s. 15, eff. 1 Jun 55)

REGULATIONS.

By Governor in Council.

13. (1) The Governor in Council may make regulations, not inconsistent with this Act, for the organization, training, discipline, efficiency,

National Defence Act

administration and good government of the Canadian Forces, and generally for carrying the purposes and provisions of this Act into effect.

(2) Subject to section 14, the Minister may make regulations, not in-^{By} Minister. consistent with this Act or regulations made by the Governor in Council, for the organization, training, discipline, efficiency, administration and good government of the Canadian Forces and generally for carrying the purposes and provisions of this Act into effect. 1950, c. 43, s. 13.

14. Where in any section of this Act, other than section 13 and this^{Limitation upon Minister's powers.} section, there is express reference to regulations made or prescribed by the Governor in Council in respect of any matter, the Minister does not have power to make regulations pertaining to that matter. 1950, c. 43, s. 14.

PART II.

THE CANADIAN FORCES.

CONSTITUTION.

15. The Canadian Forces are the naval, army and air forces of Her^{Services.} Majesty raised by Canada and consist of three Services, namely, the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force. 1950, c. 43, s. 15.

16. (1) There shall be a component of each Service of the Canadian^{Regular forces.} Forces consisting of officers and men who are enrolled for continuing, full-time military service; and those components are referred to in this Act as the regular forces.

(2) The maximum numbers of officers and men in the regular forces^{Composition.} shall be as from time to time authorized by the Governor in Council, and the regular forces shall include such units and other elements as are embodied therein.

(3) There shall be components of each Service of the Canadian Forces^{Reserve forces.} consisting of officers and men who are enrolled for other than continuing, full-time military service when not on active service; and those components are referred to in this Act as the reserve forces.

(4) The maximum numbers of officers and men in the reserve forces shall^{Composition} be as from time to time authorized by the Governor in Council, and the reserve forces shall include such units and other elements as are embodied therein.

(5) In an emergency or if considered desirable in consequence of any ac-^{Active service forces.} tion undertaken by Canada under the United Nations Charter, the North Atlantic Treaty or any other similar instrument for collective defence that may be entered into by Canada, the Governor in Council may establish and authorize the maintenance of components of the Services of the Canadian Forces, referred to in this Act as the active service forces, consisting of

(a)

National Defence Act

- (a) officers and men of the regular forces and the reserve forces who are placed in the active service forces under conditions prescribed in regulations, and
- (b) officers and men, not of the regular forces or the reserve forces, who are enrolled in the active service forces for continuing, full-time military service.

Composition.

(6) The maximum numbers of officers and men in the active service forces shall be as from time to time authorized by the Governor in Council, and the active service forces shall include such units and other elements as are embodied therein. 1950, c. 43, s. 16; 1950-51, c. 2, s. 2.

Continuation
of existing
constitution.

17. (1) Subject to this Act, the Naval Service, including the Naval Forces, and the Canadian Army and the Royal Canadian Air Force continue as constituted immediately prior to the 7th day of August, 1950.

Redesigna-
tion of
Naval
Service.

(2) On and after the 7th day of August, 1950, the Naval Service, including the Naval Forces, shall be designated as the Royal Canadian Navy. 1950, c. 43, s. 17.

UNITS AND OTHER ELEMENTS.

Organiza-
tion.

18. (1) The Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force shall consist of such units and other elements as are from time to time organized by or under the authority of the Minister.

National Defence Act

(2) A unit or other element organized under subsection (1) shall from time to time be embodied in such component of the Service of which it forms a part as the Minister may direct. 1950, c. 43, s. 18. Component.

CHIEFS OF STAFF.

19. (1) The Governor in Council may appoint an officer to be Chairman of the Chiefs of Staff Committee, who shall hold such rank and have such precedence as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, Chairman of Chiefs of Staff Committee.

(a) act as chairman of a committee composed of the chiefs of staff and such other persons as the Minister may designate;

(b) co-ordinate the training and operations of the Canadian Forces; and

(c) perform such other duties as may be assigned to him by the Minister.

(2) The Governor in Council may appoint an officer to be Chief of the Naval Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Royal Canadian Navy. Chief of the Naval Staff.

(3) The Governor in Council may appoint an officer to be Chief of the General Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Canadian Army. Chief of the General Staff.

(4) The Governor in Council may appoint an officer to be Chief of the Air Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Royal Canadian Air Force. Chief of the Air Staff.

(5) Unless the Governor in Council otherwise directs, all orders and instructions to the Royal Canadian Navy, the Canadian Army, and the Royal Canadian Air Force that are required to give effect to the decisions and to carry out the directions of the Government of Canada, or the Minister, shall be issued by or through the Chief of the Naval Staff, the Chief of the General Staff or the Chief of the Air Staff, as the case may be. 1950, c. 43, s. 19; 1951 (2nd Sess), c. 7, s. 25. Responsibility and channels of communication.

POWERS OF COMMAND.

20. The authority and powers of command of officers and men shall be as prescribed in regulations. 1950, c. 43, s. 20. Authority of officers and men.

National Defence Act

ENROLMENT.

Commissioned
officers.

21. (1) Commissions of officers in the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force shall be granted by Her Majesty during pleasure.

Subordinate
officers
and men.

(2) Persons shall be enrolled

Rep. and New.
1956, c. 18,
s. 5.

(a) as subordinate officers for indefinite or fixed terms of service, and
(b) as men for fixed terms of service,

as may be prescribed in regulations made by the Governor in Council.

Consent.

(3) A person under the age of eighteen years shall not be enrolled without the consent of one of his parents or his guardian. 1950, c. 43, s. 21.

Authorized
ranks.

22. The respective ranks that may be held by officers and men of the Canadian Forces shall be as from time to time prescribed in regulations made by the Governor in Council. 1950, c. 43, s. 22.

Numbers in
ranks and
trade groups.

23. The maximum number of persons in each rank and trade group of the Canadian Forces shall be determined as prescribed in regulations made by the Governor in Council. 1950, c. 43, s. 23.

Obligation
to serve.

24. The enrolment of a person binds that person to serve in the Canadian Forces until he is, in accordance with regulations, lawfully released. 1950, c. 43, s. 24.

Oaths on
enrolment.

25. Oaths and declarations required upon enrolment shall be taken and subscribed before commissioned officers or justices of the peace and shall be in such forms as may be prescribed in regulations. 1950, c. 43, s. 25.

Consent
to transfer.

26. Subject to subsection (3) of section 32, no officer or man shall without his consent be transferred from the regular forces to the reserve forces or from the reserve forces to the regular forces or from the Service of the Canadian Forces in which he has been enrolled to another Service of the Canadian Forces. 1950, c. 43, s. 26.

Effect of
receipt of
pay if not
enrolled.

27. (1) Where, although not enrolled or re-engaged for service, a person has received pay as an officer or man, he is, until he claims his release and is released, deemed to be an officer or man, as the case may be, of the Service and component of the Canadian Forces through which he received pay and to be subject to this Act as if he were such an officer or man duly enrolled or re-engaged for service.

Effect of
receipt
of pay if
irregularly
enrolled.

(2) Where, although there has been an error or irregularity in his enrolment or re-engagement, a person has received pay as an officer or man of that Service and component of the Canadian Forces in which he was erroneously or irregularly enrolled or re-engaged, that person is deemed to be an officer or man, as the case may be, regularly enrolled or re-engaged, and is not, except as provided in subsection (3), entitled to be released on the ground of the error or irregularity.

Provision
for release.

(3) Where a person who, by virtue of subsection (2), is deemed to be an officer or man, claims to be released within three months, reckoned

National Defence Act

from the date on which his pay commenced, and establishes the error or irregularity in his enrolment or re-engagement, he shall, except during an emergency or when he is on active service, be released.

(4) Where a person claims his release on the ground that he has not been enrolled or re-engaged or has not been regularly enrolled or re-engaged, his commanding officer shall forthwith forward his claim to the authority having power to release him and, if he is entitled to be released, he shall be released with all convenient speed. 1950, c. 43, s. 27; 1950-51, c. 2, s. 3. ^{Method of release.}

ATTACHMENT AND SECONDMENT.

28. (1) An officer or man may be attached or seconded to another component of the Service of the Canadian Forces in which he is enrolled or to any component of any Service of the Canadian Forces, other than that in which he is enrolled, in such manner and under such conditions as are prescribed in regulations; and he has like powers of command and punishment over officers and men of the component and Service of the Canadian Forces to which he is attached or seconded as if he were an officer or man of that component and Service of equivalent rank, relative to the rank he holds. ^{Within the Canadian Forces.}

(2) An officer or man may be attached or seconded to any of Her Majesty's Forces, any department or agency of government, any public or private institution, private industry or any other body in such manner and under such conditions as are prescribed in any other Act or in regulations. ^{Out of the Canadian Forces.}

(3) No officer or man of the reserve forces who is not serving on active service shall without his consent be attached or seconded pursuant to this section. 1950, c. 43, s. 28. ^{Provision regarding reserve forces.}

PROMOTION.

29. Subject to section 23 and to regulations, officers and men may be promoted by the Minister or by such authorities of the Canadian Forces as are prescribed in regulations made by the Governor in Council. 1950, c. 43, s. 29. ^{Authority.}

REDRESS OF GRIEVANCES.

30. Except in respect of a matter that would properly be the subject of an appeal or petition under Part IX, an officer or man who considers that he has suffered any personal oppression, injustice or other ill-treatment or that he has any other cause for grievance, may as a matter of right seek redress from such superior authorities in such manner and under such conditions as shall be prescribed in regulations made by the Governor in Council. 1950, c. 43, s. 30. ^{Procedure.}

RELEASE.

31. (1) Except during an emergency or when he is on active service, an officer or man is entitled to be released at the expiration of the term of service for which he is enrolled or re-engaged. ^{Entitlement.}

(2) Except as may be prescribed in regulations made by the Governor in Council, any period during which an officer or man is in a state of desertion ^{Effect of illegal absence.}

National Defence Act

or is absent without leave shall not be reckoned toward the completion of the term of service for which that officer or man was enrolled or re-engaged.

Exception in
emergency
or when on
active
service.

(3) Where the term of service for which an officer or man is enrolled or re-engaged expires during an emergency or when he is on active service or within one year after the expiration of an emergency or after he has ceased to be on active service, he is liable to serve until the expiration of one year after the emergency has ceased to exist or after he has ceased to be on active service, as the case may be. 1950, c. 43, s. 31; 1950-51, c. 2, s. 4.

Re-instate-
ment.

(4) Subject to regulations made by the Governor in Council, where an officer or man has been released from the Canadian Forces or transferred from one component to another by reason of a sentence of dismissal or a finding of guilty by a service tribunal or any court, and the sentence or finding ceases to have force and effect as a result of a decision of a competent authority, the release or transfer may, with the consent of the officer or man concerned, be cancelled, and he shall thereupon, except as provided in those regulations, be deemed for the purpose of this Act or any other Act, not to have been so released or transferred. 1955, c. 28, s. 2.

ACTIVE SERVICE.

Placing
forces
on active
service.

32. (1) The Governor in Council may place the Canadian Forces or any Service, component, unit or other element thereof or any officer or man thereof on active service anywhere in or beyond Canada at any time when it appears advisable so to do

- (a) by reason of an emergency, for the defence of Canada, or
- (b) in consequence of any action undertaken by Canada under the United Nations Charter, the North Atlantic Treaty or any other similar instrument for collective defence that may be entered into by Canada.

Effect on
status of
officers
and men.

(2) An officer or man of Her Majesty's Forces who is a member of, serving with, or attached or seconded to a Service, component or unit of the Canadian Forces that has been placed on active service, or who has been placed on active service, or who pursuant to law has been attached or seconded to a portion of a force that has been placed on active service, shall be deemed to be on active service for all purposes.

Transfer on
active
service.

(3) An officer or man on active service may for the period of such service, be transferred from the component of the Service of the Canadian Forces in which he has been enrolled to the same component of another Service of the Canadian Forces or from the reserve forces to the regular forces. 1950, c. 43, s. 32; 1950-51, c. 2, s. 5.

Proclama-
tion for
meeting of
Parliament.

33. Whenever the Governor in Council places the Canadian Forces or any Service, component or unit thereof on active service, if Parliament is then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to

National Defence Act

sit and act in like manner as if it had stood adjourned or prorogued to the same day. 1950, c. 43, s. 33.

SERVICE.

34. (1) The regular forces, all units and other elements thereof and all officers and men thereof are at all times liable to perform any lawful duty. Liability of regular forces.

(2) The reserve forces, all units and other elements thereof and all officers and men thereof. Liability of reserve forces.

(a) may be ordered to drill or train for such periods as are prescribed in regulations made by the Governor in Council, and

(b) may be called out on service to perform any naval, army or air force duty, as the case may be, other than drill or training at such times and in such manner as by regulations or otherwise are prescribed by the Governor in Council.

(3) Nothing in subsection (2) shall be deemed to impose liability to serve as prescribed therein, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only. 1950, c. 43, s. 34. Exception in case of certain reserves.

35. (1) Where the Governor in Council has declared that a disaster exists or is imminent that is, or is likely to be, so serious as to be of national concern, the regular forces or any unit or other element thereof or any officer or man thereof are liable to perform such services in respect of the disaster, existing or imminent, as the Minister may authorize, and the performance of such services shall be deemed to be naval, army or air force duty, as the case may be. Special liability of regular forces in national disaster.

(2) Where the Governor in Council declares that a disaster as mentioned in subsection (1) exists or is imminent and that the services of the reserve forces are required for the purpose of rendering assistance in respect of the disaster, existing or imminent, the Governor in Council may authorize the reserve forces or any unit or other element thereof or any officer or man thereof to be called out on service for that purpose and all officers and men while so called out shall be deemed to be performing naval, army or air force duty, as the case may be. Special liability of reserve forces in national disaster.

(3) Nothing in subsection (2) shall be deemed to impose liability to serve as prescribed therein, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only. 1950, c. 43, s. 35. Exception in case of certain reserves.

PAY AND ALLOWANCES.

36. (1) The pay and allowances of officers and men shall be at such rates and issued under such conditions as are prescribed in regulations made by the Governor in Council. Rates and conditions.

National Defence Act

Forfeitures
and deduc-
tions.

(2) The pay and allowances of officers and men are subject to such forfeitures and deductions as are prescribed in regulations made by the Governor in Council.

Assignments.

(3) Unless made in accordance with regulations prescribed by the Governor in Council, an assignment of pay and allowances is void. 1950, c. 43, s. 36.

SUPPLY AND ISSUE OF MATERIEL.

Authority.

37. The materiel supplied to or used by the Canadian Forces shall be of such type, pattern and design and shall be issued on such scales and in such manner as the Minister, or such authorities of the Canadian Forces as are designated by him for that purpose, may approve. 1950, c. 43, s. 37.

PUBLIC PROPERTY.

Liability
for loss or
damage.

38. The conditions under which and the extent to which an officer or man is liable to Her Majesty in respect of loss of or damage to public property shall be as prescribed in regulations. 1950, c. 43, s. 38.

NON-PUBLIC PROPERTY.

Non-public
property
of units.

39. (1) The non-public property of a unit or other element of the Canadian Forces shall vest in the officer from time to time in command of that unit or other element, and shall be used for the benefit of officers and men or for any other purpose approved by the chief of staff of the Service of the Canadian Forces in which that unit or other element is comprised, in the manner and to the extent authorized by that chief of staff.

Non-public
property of
disbanded
units.

(2) The non-public property of every disbanded unit or other disbanded element of the Canadian Forces, vested in the officer in command of that unit or other element, shall pass to and vest in the chief of staff of the Service of the Canadian Forces in which that unit or other element was comprised, and may be disposed of at his discretion and direction for the benefit of all or any officers and men or former officers and men, or their dependants, of the Service of the Canadian Forces in which that unit or other element was comprised.

Non-public
property of
units in
altered
circum-
stances.

(3) Where, by reason of a substantial reduction in the number of officers and men serving in a unit or other element of the Canadian Forces or by reason of a change in the location or other conditions of service of a unit or other element, the chief of staff of the Service of the Canadian Forces in which the unit or other element is comprised considers it desirable so to do, he may direct that the non-public property or any part thereof that is vested in the officer in command of that unit or other element shall pass to and be vested in the chief of staff upon the terms set out in subsection (2).

Other non-
public
property.

(4) Non-public property acquired by contribution but not contributed to any specific unit or other element of the Canadian Forces shall

National Defence Act

vest in the chief of staff of the Service of the Canadian Forces to which that non-public property is contributed and, subject to any specific directions by the contributor as to its disposal, may be disposed of at his discretion and direction for the benefit of all or any officers and men or former officers and men, or their dependants, of that Service of the Canadian Forces.

(5) By-products and refuse derived from rations and other consumable stores issued to the Canadian Forces for use in service kitchens, and the proceeds of the sale thereof, shall, to the extent that the Governor in Council may prescribe, be non-public property. By-products and refuse.

(6) Except as authorized by the appropriate chief of staff, no gift, sale or other alienation or attempted alienation of non-public property is effectual to pass the property therein. Alienation of non-public property.

(7) The conditions under which and the extent to which an officer or man is liable to make restitution or reimbursement in respect of loss of or damage to non-public property resulting from his negligence or misconduct shall be as prescribed by the Minister. Liability for loss or damage.

(8) A chief of staff shall exercise his authority under subsections (1), (2) and (4) subject to any directions that may be given to him by the Minister for carrying the purposes and provisions of this section into effect. Exercise of authority.

(9) Non-public property account shall be audited as the Minister may from time to time direct. Audit.

(10) The *Financial Administration Act* does not apply to non-public property. 1950, c. 43, s. 39. Special provision.

SERVICE ESTATES.

40. (1) The service estates of officers and men who die during their service in the Canadian Forces may be collected, administered and distributed in whole or in part as prescribed in regulations made by the Governor in Council. Collection, administration and distribution.

(2) For the purposes of this section, but subject to any exceptions prescribed in regulations made by the Governor in Council, "service estate" means the following parts of the estate of a deceased officer or man mentioned in subsection (1), Definition of "service estate". Rep. and New. R.S.C. 1952, c. 810, s. 2(1).

- (a) service pay and allowances;
- (b) all other emoluments emanating from Her Majesty that, at the date of death, are due or otherwise payable;
- (c) personal equipment that the deceased person is, under regulations, permitted to retain;
- (d) personal belongings, including cash, found on the deceased person or in camp, quarters or otherwise in the care or custody of the Canadian Forces; and
- (e) in the case of an officer or man dying out of Canada, all other personal property belonging to the deceased situate out of Canada if in the opinion of the person authorized to administer service estates the total value of such other property does not exceed ten thousand dollars. 1950, c. 43, s. 40. New, 1953-54, c. 13, s. 9.

National Defence Act

PRESUMPTION OF DEATH.

Authority
to issue
certificate.

41. Where an officer or man disappears under circumstances that, in the opinion of the Minister or such other authorities as he may designate, raise beyond reasonable doubt a presumption that he is dead, the Minister or any such other authority may issue a certificate declaring that such officer or man is deemed to be dead and stating the date upon which his death is presumed to have occurred, and such officer or man shall thenceforth, for the purposes of this Act and the regulations and in relation to his status and service in the Canadian Forces, be deemed to have died on that date. 1950, c. 43, s. 41.

PERSONAL EFFECTS OF ABSENTEES.

Disposal.

42. The personal belongings and decorations of an officer or man, who is absent without leave, that are found in camp, quarters or otherwise in the care or custody of the Canadian Forces shall vest in Her Majesty and shall be disposed of in accordance with regulations made by the Governor in Council. 1950, c. 43, s. 42.

BOARDS OF INQUIRY.

Convening.

43. The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, where it is expedient that he or any such other authority should be informed on any matter connected with the government, discipline, administration or functions of the Canadian Forces or affecting any officer or man, convene a board of inquiry for the purpose of investigating and reporting on that matter. 1950, c. 43, s. 43.

CADET ORGANIZATIONS.

Formation.

44. (1) The Minister may authorize the formation of cadet organizations under the joint or several control and supervision of the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force, to consist of boys not less than twelve years of age and who have not attained the age of nineteen years.

Conditions
of service.

(2) The cadet organizations mentioned in subsection (1) shall be trained for such periods, administered in such manner, provided with materiel and accommodation under such conditions and shall be subject to the authority and command of such officers as the Minister may direct.

Not part of
the forces.

(3) The cadet organizations mentioned in subsection (1) shall not be comprised in the Canadian Forces. 1950, c. 43, s. 44.

EDUCATIONAL INSTITUTIONS.

Establish-
ment.

45. (1) The Governor in Council, and such other authorities as are prescribed or appointed by the Governor in Council for that purpose, may in the interests of national defence establish institutions for the

National Defence Act

training and education of officers and men, officers and employees of the Department and of the Defence Research Board, candidates for enrolment in the Canadian Forces or for employment in the Department or by the Defence Research Board and other persons whose attendance has been authorized by or on behalf of the Minister.

(2) The institutions mentioned in subsection (1) shall be governed and administered in the manner prescribed by the Minister. 1950, c. 43, s. 45. Administration.

SERVICE ASSOCIATIONS.

46. (1) The Governor in Council may establish associations and organizations for purposes designed to further the defence of Canada. Establishment.

(2) The Minister may authorize the provision of accommodation, materiel and facilities for the training, practice and use of the associations and organizations mentioned in subsection (1) and other associations and organizations designed to further the defence of Canada, whether or not the members of such associations and organizations are officers or men. 1950, c. 43, s. 46. Equipment.

EXERCISE OF AUTHORITY.

47. Any power or jurisdiction given to, and any act or thing to be done by, to or before any officer or man may be exercised by, or done by, to or before any other officer or man for the time being authorized in that behalf by regulations or according to the custom of the service. 1950, c. 43, s. 47. Conditions applicable.

48. Orders made under this Act may be signified by an order, instruction or letter under the hand of any officer whom the authority who made such orders has authorized to issue orders on his behalf; and any order, instruction or letter purporting to be signed by any officer appearing therein so to be authorized is evidence of his being so authorized. 1950, c. 43, s. 48. Method of signifying orders.

NOTIFICATION OF ORDERS.

49. (1) All regulations and all orders and instructions issued to the Canadian Forces shall be held to be sufficiently notified to any person whom they may concern by their publication, in the manner prescribed in regulations made by the Governor in Council, in the unit or other element in which that person is serving. By exhibition.

(2) All regulations and all orders and instructions relating to or in any way affecting an officer or man of the reserve forces, other than an officer or man who is serving with a unit or other element, when sent to him by registered mail, addressed to his last known place of abode or business, shall be held to be sufficiently notified. By mail.

(3) Notwithstanding subsections (1) and (2), all regulations and all orders and instructions mentioned in those subsections shall be Saving provision.

National Defence Act

held to be sufficiently notified to any person whom they may concern by their publication in the *Canada Gazette*. 1950, c. 43, s. 49.

VALIDITY OF DOCUMENTS.

Authenticity
of docu-
ments.

50. A commission, appointment, warrant, order or instruction in writing purported to be granted, made or issued under this Act is evidence of its authenticity without proof of the signature or seal affixed thereto or the authority of the person granting, making or issuing it. 1950, c. 43, s. 50.

Signature on
commissions.

51. (1) The Governor General may cause his signature to be affixed to a commission granted to an officer of the Canadian Forces by stamping the signature on the commission with a stamp approved by him and used for the purpose by his authority.

Validity.

(2) A signature affixed in accordance with subsection (1) is as valid and effectual as if it were in the handwriting of the Governor General, and neither its authenticity nor the authority of the person by whom it was affixed shall be called in question except on behalf of Her Majesty. 1950, c. 43, s. 51.

Validity of
bonds.

52. Every bond to Her Majesty entered into by any person before a judge or justice of the peace, or officer of the Canadian Forces, for the purpose of securing the payment of a sum of money or the performance of a duty or act required or authorized by this Act or by regulations, is valid and may be enforced accordingly. 1950, c. 43, s. 52.

PART III.

THE DEFENCE RESEARCH BOARD.

Defence
Research
Board and
its functions.

53. (1) There shall be a Defence Research Board, which shall carry out such duties in connection with research relating to the defence of Canada and development of or improvements in material as the Minister may assign to it, and shall advise the Minister on all matters relating to scientific, technical, and other research and development that in its opinion may affect national defence.

Constitution.

(2) The Defence Research Board consists of a Chairman and a Vice-Chairman, appointed by the Governor in Council, the persons who from time to time hold the offices of Chief of the Naval Staff, Chief of the General Staff, Chief of the Air Staff, President of the Honorary Advisory Council for Scientific and Industrial Research, and Deputy Minister of National Defence, and such additional members representative of universities, industry and other research interests as the Governor in Council appoints.

Chairman
and Vice-
Chairman—
tenure and
salary.

(3) The Chairman and Vice-Chairman hold office during pleasure, and shall be paid such salaries as the Governor in Council determines.

National Defence Act

(4) The members of the Defence Research Board, other than the Chairman, Vice-Chairman or the *ex officio* members, hold office for a period not exceeding three years but are eligible for re-appointment, and shall be paid such remuneration, if any, as the Governor in Council determines.

Other members—tenure and remuneration.

(5) Each member shall be paid his travelling and other expenses incurred in connection with the work of the Defence Research Board.

Expenses of members.

(6) The Chairman is the chief executive officer of the Defence Research Board and, under the direction of the Minister and in accordance with policies approved by the Board, shall oversee and direct the officers, clerks and employees of the Board, have general control of the business of the Board, have supervision over the work directed to be carried out by the Board, be charged with the organization, administration and operation of the defence establishments of the Board and perform such other duties as the Minister may assign to him.

Duties of Chairman.

(7) The Vice-Chairman shall perform such duties as may be assigned to him under the by-laws made by the Defence Research Board.

Duties of Vice-Chairman.

(8) The Chairman has a status equivalent to that of a chief of staff of a Service of the Canadian Forces. 1950, c. 43, s. 53.

Status of Chairman.

54. The Defence Research Board may, with the approval of the Minister,

Powers of the Defence Research Board.

(a) notwithstanding the *Civil Service Act* or any other section of this Act or any other statute or law, appoint and employ the professional, scientific, technical, clerical and other employees required to carry out efficiently the duties of the Board, prescribe their duties and, subject to the approval of the Governor in Council, prescribe their terms of appointment and service and fix their remuneration;

(b) make by-laws or rules for the regulation of its proceedings and for the performance of its functions;

(c) enter into contracts in the name of Her Majesty for research and investigations with respect only to matters relating to defence; and

(d) make grants in aid of research and investigations with respect only to matters relating to defence and establish scholarships for the education or training of persons to qualify them to engage in such research and investigations. 1950, c. 43, s. 54.

55. (1) All expenses of the Defence Research Board shall be paid out of moneys appropriated by Parliament for the purpose or received by the Board through the conduct of its operations, bequests, donations or otherwise and shall be paid by the Minister of Finance on the requisition of the Minister.

Expenses of the Defence Research Board.

(2) The Minister may request the Minister of Finance to allocate any portion of the moneys appropriated by Parliament for the purposes of the Defence Research Board for scholarships or grants in aid of research and investigations, and thereupon the Minister of Finance

Scholarships and grants in aid.

National Defence Act

shall hold that portion of the moneys in trust and may at any time on the requisition of the Minister disburse that portion of the moneys for scholarships or grants in aid of research and investigations.

Moneys not
required.

(3) Any moneys allocated by the Minister of Finance under this section that, in the opinion of the Minister, are not required for the purpose for which they were allocated shall cease to be held in trust. 1950, c. 43, s. 55.

PART IV.

DISCIPLINARY JURISDICTION OF THE SERVICES.

APPLICATION.

Persons
subject.

56. (1) The following persons, and no others, are subject to the Code of Service Discipline:

- (a) an officer or man of the regular forces;
- (b) an officer or man of the active service forces;
- (c) an officer or man of the reserve forces when he is
 - (i) undergoing drill or training whether in uniform or not,
 - (ii) in uniform,
 - (iii) on duty,
 - (iv) called out under subsection (2) of section 35 to render assistance in a disaster,
 - (v) called out under Part XI in aid of the civil power,
 - (vi) called out on service,
 - (vii) placed on active service,
 - (viii) in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence,
 - (ix) serving with any unit or other element of the regular forces or the active service forces, or
 - (x) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces;
- (d) subject to such exceptions, adaptations, and modifications as the Governor in Council may by regulations prescribe, a person who pursuant to law is attached or seconded as an officer or man to a Service of the Canadian Forces;
- (e) a person, not otherwise subject to the Code of Service Discipline, who is serving in the position of an officer or man of any force raised and maintained out of Canada by Her Majesty in right of Canada and commanded by an officer of the Canadian Forces;
- (f) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place;

National Defence Act

- (g) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person attending an institution established under section 45;
- (h) an alleged spy for the enemy;
- (i) a person, not otherwise subject to the Code of Service Discipline, who, in respect of any service offence committed or alleged to have been committed by him, is in civil custody or in service custody; and
1955, c. 28, s. 3.
- (j) a person, not otherwise subject to the Code of Service Discipline, while serving with a Service of the Canadian Forces under an engagement with the Minister whereby he agreed to be subject to that Code.

(2) Every person subject to the Code of Service Discipline under sub-section (1) at the time of the alleged commission by him of a service offence continues to be liable to be charged, dealt with and tried in respect of that offence under the Code of Service Discipline notwithstanding that he may have, since the commission of that offence, ceased to be a person mentioned in sub-section (1). Continuing liability.

(3) Every person who, since the alleged commission by him of a service offence, has ceased to be a person mentioned in subsection (1), shall for the purposes of the Code of Service Discipline be deemed, for the period during which under that Code he is liable to be charged, dealt with and tried, to have the status and rank that he held immediately prior to the time when he ceased to be a person mentioned in subsection (1). Retention of status.

Persons in Canadian Forces.

(4) Subject to subsections (5) and (6), every officer or man who is alleged to have committed a service offence may be charged, dealt with and tried only within the Service of the Canadian Forces in which he is enrolled. An officer or man to be tried by own Service.

(5) Every officer or man who, while attached or seconded to a Service of the Canadian Forces other than the Service in which he is enrolled, is alleged to have committed a service offence, may be charged, dealt with and tried either within that other Service, as if he were an officer or man thereof, or within the Service in which he is enrolled. Attachment and secondment.

(6) Every officer or man who, while embarked on any vessel or aircraft of a Service of the Canadian Forces other than the Service in which he is enrolled, is alleged to have committed a service offence, may be charged, dealt with and tried either within that other Service, as if he were an officer or man thereof, or within the Service in which he is enrolled. When on vessel or aircraft of other Service.

(7) Every person serving in the circumstances set forth in paragraph (e) of subsection (1) who, while so serving, is alleged to have committed a service offence, may be charged, dealt with and tried within that Service of the Canadian Forces in which his commanding officer is serving. Forces raised out of Canada.

offence

*National Defence Act**Persons Accompanying Canadian Forces.*

Definition
of "Persons
accompany-
ing Canadian
Forces."

New.
1953-54,
c. 13, s. 10.

(7a) For the purposes of this section, but subject to any limitations prescribed by the Governor in Council, a person accompanies a unit or other element of the Canadian Forces that is on service or active service if such person

- (a) participates with that unit or other element in the carrying out of any of its movements, manoeuvres, duties in aid of the civil power, duties in a disaster, or warlike operations,
- (b) is accommodated or provided with rations at his own expense or otherwise by that unit or other element in any country or at any place designated by the Governor in Council,
- (c) is a dependant out of Canada of an officer or man serving beyond Canada with that unit or other element, or
- (d) is embarked on a vessel or aircraft of that unit or other element.

Trial of
persons
Accompany-
ing Canadian
Forces.

New.
1953-54,
c. 13, s. 10.

(7b) Notwithstanding anything in this Act, where a person mentioned in subsection (7a) is to be tried by a court martial

- (a) he shall, if he comes within paragraph (c) of that subsection, and
- (b) he may, if he comes within paragraph (a), (b) or (d) of that subsection,

be tried by a General Court Martial consisting of a person, designated by the Minister, who is or has been a judge of a superior court in Canada, or is a barrister or advocate of at least ten years' standing at the bar of any province of Canada, and, subject to such modifications and additions as the Governor in Council may prescribe, the provisions of this Act and the regulations relating to trials of accused persons by General Courts Martial and to their conviction, sentence and punishment are applicable to trials by a General Court Martial established under this subsection, and to the conviction, sentence and punishment of persons so tried.

National Defence Act

(8) Every person mentioned in paragraph (f) of subsection (1) who, while ^{Dealt with by Service accompanied.} accompanying any unit or other element of the Canadian Forces, is alleged to have committed a service offence, may be charged, dealt with and tried within the Service in which is comprised the unit or other element of the Canadian Forces that he accompanies, and for that purpose shall be treated as a man, unless he holds from the commanding officer of the unit or other element of the Canadian Forces that he so accompanies or from any other officer prescribed by the Minister for that purpose, a certificate, revocable at the pleasure of the officer who issued it or of any other officer of equal or higher rank, entitling such person to be treated on the footing of an officer, in which case he shall be treated as an officer in respect of any offence alleged to have been committed by him while holding that certificate.

(9) Every person mentioned in subsection (8) shall, for the purposes of ^{Command.} the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Service of the Canadian Forces that such person accompanies.

Spies for the Enemy.

(10) Every person mentioned in paragraph (h) of subsection (1) may be ^{Dealt with by Service having custody.} charged, dealt with and tried within the Service of the Canadian Forces in which he is at any time held in custody and shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of such unit or other element of that Service as may be holding him in custody from time to time.

Released Persons Serving Sentence.

(11) Every person mentioned in paragraph (i) of subsection (1) who is ^{Dealt with by Service having custody.} alleged to have committed, during the currency of his imprisonment or detention, a service offence, may be charged, dealt with and tried within the Service of the Canadian Forces that controls or administers the service prison or detention barrack to which he has been committed, and shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of that service prison or detention barrack, as the case may be.

Persons Under Special Engagement.

(12) Every person mentioned in paragraph (j) of subsection (1) who, ^{Dealt with by Service in which engaged.} while serving with a Service of the Canadian Forces, is alleged to have committed a service offence, may be charged, dealt with and tried within that Service and for that purpose he shall be treated as a man, unless the terms of the agreement under which he was engaged entitle him to be treated as an officer, in which case he shall be treated as an officer.

(13) Every person mentioned in subsection (12) shall, for the purposes of ^{Command.} the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Service of the Canadian Forces in which that person is serving.

*National Defence Act**Women.*

Application.

(14) The Code of Service Discipline, in its application to female persons, may be limited or modified by regulations made by the Governor in Council. 1950, c. 43, s. 56.

Persons
deemed to be
under com-
mand of
superior officer.
New.
1956, c. 18 s. 6.

(15) Every person subject to the Code of Service Discipline by virtue of paragraph (f), (g), (i) or (j) of subsection (1), shall, for the purposes of preparation, practise or execution of any plan, arrangement or manoeuvre for the defence or evacuation of any area in the event of attack, be under the command of the commanding officer of the unit or other element of the service of the Canadian Forces that he is accompanying or with which he is serving or is in attendance and such commanding officer shall for such purposes be deemed to be a superior officer of such person, but nothing in this subsection shall be construed as requiring any such person to bear arms or to participate in any active operations against the enemy.

National Defence Act

PLEA IN BAR OF TRIAL.

57. (1) Every person, in respect of whom a charge of having committed a service offence has been dismissed, or who has been found guilty or not guilty either by a service tribunal or a civil court on a charge of having committed any such offence, shall not be tried or tried again by a service tribunal under this Act in respect of that offence or any other offence of which he might have been found guilty on that charge by a service tribunal or a civil court. Autrefois acquit and autrefois convict.

(2) Nothing in subsection (1) affects the validity of a new trial ordered or directed under section 172A, 191 or 199. 1955, c. 28, s. 9. Exception.

(3) Every person who under section 163 has been sentenced in respect of a service offence admitted by him shall not be tried by a service tribunal under this Act in respect of that offence. 1950, c. 43, s. 57. Effect of other offences admitted at previous trial.

PLACE OF COMMISSION OF OFFENCE.

58. Subject to section 61, every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, whether the alleged offence was committed in Canada or out of Canada. 1950, c. 43, s. 58. No limitation.

PLACE OF TRIAL.

59. Every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, either in Canada or out of Canada. 1950, c. 43, s. 59. No limitation.

PERIOD OF LIABILITY UNDER CODE OF SERVICE DISCIPLINE.

60. (1) Except in respect of the service offences mentioned in sub-section (2), no person is liable to be tried by a service tribunal unless his trial begins before the expiration of a period of three years from the day upon which the service offence was alleged to have been committed. Time bar.

(2) Every person, subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence of mutiny, desertion or absence without leave or a service offence for which the highest punishment that may be imposed is death, continues to be liable to be charged, dealt with and tried at any time under the Code of Service Discipline. 1950, c. 43, s. 60. Exceptions.

(3) In calculating the period of limitation referred to in subsection (1), there shall not be included Exclusion of time.

- (a) time during which a person was a prisoner of war,
 - (b) any period of absence in respect of which a person has been found guilty by any service tribunal of desertion or absence without leave, and
 - (c) any time during which a person was serving a sentence of incarceration imposed by any court other than a service tribunal.
- 1955, c. 28, s. 4.

LIMITATIONS WITH RESPECT TO CERTAIN OFFENCES.

61. A service tribunal shall not try any person charged with an offence of murder, rape or manslaughter, committed in Canada. 1950, c. 43, s. 61. Murder, rape or manslaughter.

National Defence Act

JURISDICTION OF CIVIL COURTS.

No inter-
ference
with civil
jurisdiction.

Civil
sentence
modified
by service
punishment.

Remission in
certain cases.

62. (1) Nothing in the Code of Service Discipline affects the jurisdiction of any civil court to try a person for any offence triable by that court.

(2) Where a person, sentenced by a service tribunal in respect of a conviction on a charge of having committed a service offence, is afterwards tried by a civil court for the same offence or for any other offence of which he might have been found guilty on that charge, the civil court shall in awarding punishment take into account any punishment imposed by the service tribunal for the service offence.

(3) Where a civil court that tries a person in the circumstances set out in subsection (2) either acquits or convicts the person of an offence, the unexpired term of any punishment of imprisonment for more than two years, imprisonment for less than two years or detention, imposed by the service tribunal in respect of that offence, shall be deemed to be wholly remitted as of the date of the acquittal or conviction by that civil court. 1950, c. 43, s. 62.

PART V.

SERVICE OFFENCES AND PUNISHMENTS.

RESPONSIBILITY FOR OFFENCES.

Parties to
offences.

63. (1) Every person is a party to and guilty of an offence who

- (a) actually commits it;
- (b) does or omits an act for the purpose of aiding any person to commit the offence;
- (c) abets any person in commission of the offence; or
- (d) counsels or procures any person to commit the offence.

Intent to
commit
offence.

(2) Every person who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit such offence or not. 1950, c. 43, s. 63.

Parties
to an offence.
New.
1956, c. 18, s.
7.

(3) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to and guilty of that offence.

MISCONDUCT OF COMMANDERS IN PRESENCE OF ENEMY.

Offences by
commanders
when in
action.

64. Every officer in command of a vessel, aircraft, defence establishment, unit or other element of the Canadian Forces who

- (a) when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, does not use his utmost exertion to bring the officers and men under his command or his vessel, aircraft, or his other materiel into action;
- (b) being in action, does not, during the action, in his own person and according to his rank, encourage his officers and men to fight courageously;

National Defence Act

- (c) when capable of making a successful defence, surrenders his vessel, aircraft, defence establishment, materiel, unit or other element of the Canadian Forces to the enemy;
- (d) being in action, improperly withdraws from the action;
- (e) improperly fails to pursue an enemy or to consolidate a position gained;
- (f) improperly fails to relieve or assist a known friend to the utmost of his power; or
- (g) when in action, improperly forsakes his station,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, if he acted from cowardice is liable to suffer death or less punishment, and in any other case is liable to dismissal with disgrace from Her Majesty's service or to less punishment. 1950, c. 43, s. 64.

MISCONDUCT OF ANY PERSON IN PRESENCE OF ENEMY.

65. Every person who

- (a) improperly delays or discourages any action against the enemy;
- (b) goes over to the enemy;
- (c) when ordered to carry out an operation of war, fails to use his utmost exertion to carry the orders into effect;
- (d) improperly abandons or delivers up any defence establishment, garrison, place, materiel, post or guard;
- (e) assists the enemy with materiel;
- (f) improperly casts away or abandons any materiel in the presence of the enemy;
- (g) improperly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of materiel;
- (h) when on watch in the presence or vicinity of the enemy, leaves his post before he is regularly relieved or sleeps or is drunk;
- (i) behaves before the enemy in such manner as to show cowardice; or
- (j) does or omits to do anything with intent to imperil the success of any of Her Majesty's Forces or of any forces co-operating therewith,

Offences by
any person
in presence
of enemy.

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case, if the offence was committed in action, is liable to suffer death or less punishment or, if the offence was committed otherwise than in action, to imprisonment for life or to less punishment. 1950, c. 43, s. 65.

SECURITY.

66. Every person who

- (a) improperly holds communication with or gives intelligence to the enemy;

Offences
related to
security.

National Defence Act

- (b) without authority discloses in any manner whatsoever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparations for operations of any of Her Majesty's Forces or of any forces co-operating therewith;
- (c) without authority discloses in any manner whatsoever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of Her Majesty's Forces, or of any forces co-operating therewith;
- (d) makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it;
- (e) gives a parole, watchword, password, countersign or identification signal different from that which he received;
- (f) without authority alters or interferes with any identification or other signal;
- (g) improperly occasions false alarms;
- (h) when acting as sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk;
- (i) forces a safeguard or forces or strikes a sentinel; or
- (j) does or omits to do anything with intent to prejudice the security of any of Her Majesty's Forces or of any forces co-operating therewith,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment. 1950, c. 43, s. 66.

PRISONERS OF WAR.

Offences
related
to prisoners
of war.

67. Every person who,

- (a) by want of due precaution, or through disobedience of orders or wilful neglect of duty, is made a prisoner of war;
 - (b) having been made a prisoner of war, fails to rejoin Her Majesty's service when able to do so; or
 - (c) having been made a prisoner of war, serves with or aids the enemy,
- is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment. 1950, c. 43, s. 67.

MISCELLANEOUS OPERATIONAL OFFENCES.

Offences
related to
operations.

68. Every person who

- (a) does violence to any person bringing materiel to any of Her Majesty's Forces or to any forces co-operating therewith;
- (b) irregularly detains any materiel being conveyed to any unit or other element of Her Majesty's Forces or of any forces co-operating therewith;

National Defence Act

- (c) irregularly appropriates to the unit or other element of the Canadian Forces with which he is serving any materiel being conveyed to any other unit or element of Her Majesty's Forces or of any forces co-operating therewith;
- (d) without orders from his superior officer, improperly destroys or damages any property;
- (e) breaks into any house or other place in search of plunder;
- (f) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving,
- (g) steals from, or with intent to steal searches, the person of any person killed or wounded, in the course of warlike operations; New, 1956, c. 18, s. 8.
- (h) steals any money or property that has been left exposed or unprotected in consequence of warlike operations; or New, 1956, c. 18, s. 8.
- (i) takes otherwise than for the public service any money or property abandoned by the enemy; New, 1956, c. 18, s. 8.

is guilty of an offence and on conviction, if he committed any such offence on active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to dismissal with disgrace from Her Majesty's service or to less punishment. 1950, c. 43, s. 68.

SPIES FOR THE ENEMY

69. Every person who is a spy for the enemy is guilty of an offence and on conviction is liable to suffer death or less punishment. Penalty. 1950, c. 43, s. 69.

MUTINY.

70. Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to suffer death or less punishment. Mutiny with violence. 1950, c. 43, s. 70.

71. Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment and, in the case of a ringleader of the mutiny, to suffer death or less punishment. Mutiny without violence. 1950, c. 43, s. 71.

72. Every person who Offences related to mutiny.

- (a) causes or conspires with any other person to cause a mutiny;
- (b) endeavours to persuade any person to join in a mutiny;
- (c) being present, does not use his utmost endeavours to suppress a mutiny; or
- (d) being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof,

is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. 1950, c. 43, s. 72.

SEDITIONOUS OFFENCES.

73. Every person who publishes or circulates any writing, printing or document in which is advocated, or who teaches or advocates, the use, without the authority of law, of force as a means of accomplishing any governmental change within Canada is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. Advocating governmental change by force. 1950, c. 43, s. 73.

National Defence Act

INSUBORDINATION.

Disobedience
of lawful
command.

74. Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. 1950, c. 43, s. 74.

Striking or
offering
violence to
a superior
officer.

75. Every person who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use, or offers violence against a superior officer, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. 1950, c. 43, s. 75.

Insub-
ordinate
behaviour.

76. Every person who uses threatening or insulting language to or behaves with contempt toward a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment. 1950, c. 43, s. 76.

Quarrels and
disturbances.

77. Every person who quarrels or fights with any other person who is subject to the Code of Service Discipline, or who uses provoking speeches or gestures toward a person so subject tending to cause a quarrel or disturbance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 77.

Disorders.

78. Every person who

- (a) being concerned in a quarrel, fray or disorder, refuses to obey an officer, though of inferior rank, who orders him into arrest, or strikes or uses or offers violence to any such officer;
- (b) strikes or uses or offers violence to any person in whose custody he is placed, whether or not such other person is his superior officer and whether or not such other person is subject to the Code of Service Discipline;
- (c) resists an escort whose duty it is to apprehend him or to have him in charge; or
- (d) breaks out of barracks, station, camp, quarters or ship,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 78.

DESERTION.

Offence.

79. (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if he committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment.

Definition.

(2) A person deserts who

- (a) being on or having been warned for active service or other important service, is absent without authority with the intention of avoiding that service;
- (b) having been warned that his vessel is under sailing orders, is absent without authority, with the intention of missing that vessel;

National Defence Act

- (c) absents himself without authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place;
- (d) is absent without authority from his unit or formation or from the place where his duty requires him to be and at any time during such absence forms the intention of not returning to that unit, formation or place; or
- (e) while absent with authority from his unit or formation or the place where his duty requires him to be, with the intention of not returning to that unit, formation or place, does any act, or omits to do anything, the natural and probable consequence of which act or omission is to preclude his return to that unit, formation or place at the time required.

(3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be. 1950, c. 43, s. 79. Presumption of desertion.

80. Every person who

- (a) being aware of the desertion or intended desertion of a person from any of Her Majesty's Forces, does not without reasonable excuse inform his superior officer forthwith; or
- (b) fails to take any steps in his power to cause the apprehension of a person known by him to be a deserter,

Connivance at desertion.

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 80.

ABSENCE WITHOUT LEAVE.

81. (1) Every person who absents himself without leave is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. Offence.

(2) A person absents himself without leave who

Definition.

- (a) without authority leaves his unit or formation or the place where his duty requires him to be;
- (b) without authority is absent from his unit or formation or the place where his duty requires him to be; or
- (c) having been authorized to be absent ~~from~~ ^{from} his unit or formation or the place where his duty required him to be, fails to return to that unit, formation or place at the expiration of the period for which his absence was authorized. 1950, c. 43, s. 81. "AL 27"

82. Every person who knowingly makes a false statement in respect of prolongation of leave of absence is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 82. False statement in respect of leave.

National Defence Act

DISGRACEFUL CONDUCT.

Scandalous
conduct by
officers.

83. Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service. 1950, c. 43, s. 83.

Cruel or
disgraceful
conduct.

84. Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment. 1950, c. 43, s. 84.

Traitorous
utterances.

85. Every person who uses traitorous or disloyal words regarding Her Majesty is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment. 1950, c. 43, s. 85.

Abuse of
inferiors.

86. Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 86.

False accu-
sations or
statements.

87. Every person who
(a) makes a false accusation against an officer or man, knowing such accusation to be false; or
(b) when seeking redress under section 30, knowingly makes a false statement affecting the character of an officer or man or knowingly, in respect of the redress so sought, suppresses any material fact,
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 87.

Drunken-
ness.

88. Drunkenness, whether on duty or not on duty, is an offence and every person convicted thereof is liable to imprisonment for less than two years or to less punishment, except that, where the offence is committed by a man who is neither on active service nor on duty, no punishment of imprisonment, and no punishment of detention for a term in excess of ninety days, shall be imposed. 1950, c. 43, s. 88.

Malingering
or maiming.

89. Every person who
(a) malingers or feigns or produces disease or infirmity;
(b) aggravates, or delays the cure of, disease or infirmity by misconduct or wilful disobedience of orders; or
(c) wilfully maims or injures himself or any other person who is a member of any of Her Majesty's Forces or of any forces co-operating therewith, whether at the instance of that person or not, with intent thereby to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service,

is guilty of an offence and on conviction, if he commits the offence on active service or when under orders for active service, or in respect of a person on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case, is

National Defence Act

liable to imprisonment for a term not exceeding five years or to less punishment. 1950, c. 43, s. 89.

OFFENCES IN RELATION TO SERVICE ARREST AND CUSTODY.

90. Every person who unnecessarily detains any other person in arrest or confinement without bringing him to trial, or fails to bring that other person's case before the proper authority for investigation, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 90.

Ill-treatment
of person in
custody.

91. Every person who

(a) without authority sets free or authorizes or otherwise facilitates the setting free of any person in custody;

(b) negligently or wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody; or

(c) assists any person in escaping or in attempting to escape from custody,

Negligent or
wilful inter-
ference with
lawful
custody.

is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for a term not exceeding seven years or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 91.

92. Every person who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes, or attempts to escape, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 92.

Escape from
custody.

93. Every person who

(a) resists or wilfully obstructs an officer or man in the performance of any duty pertaining to the arrest, custody or confinement of a person subject to the Code of Service Discipline; or

(b) when called upon, refuses or neglects to assist an officer or man in the performance of any such duty,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 93.

Obstruction
—service
police duties.

94. Every person who neglects or refuses to deliver over an officer or man to the civil power, pursuant to a warrant in that behalf, or to assist in the lawful apprehension of an officer or man accused of an offence punishable by a civil court is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 94.

Obstruction
of civil
power.

OFFENCES IN RELATION TO VESSELS.

95. Every person who wilfully or negligently or through other default loses, strands or hazards, or suffers to be lost, stranded or hazarded any of Her Majesty's Canadian ships or other vessels of the Canadian Forces is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment. 1950, c. 43, s. 95.

Losing,
stranding or
hazarding
vessels.

National Defence Act

Offences in
relation to
convoys.

96. Every officer who, while serving in one of Her Majesty's Canadian ships involved in the conveying and protection of a vessel,

- (a) fails to defend a vessel or goods under convoy;
- (b) refuses to fight in the defence of a vessel in his convoy when it is attacked; or
- (c) cowardly abandons or exposes a vessel in his convoy to hazards,

is guilty of an offence and on conviction is liable to suffer death or less punishment. 1950, c. 43, s. 96.

OFFENCES IN RELATION TO AIRCRAFT.

Wrongful
acts in
relation to
aircraft, etc.

97. Every person who

- (a) in the use of or in relation to any aircraft or aircraft material, wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do any thing, which act or omission causes or is likely to cause loss of life or bodily injury to any person;
- (b) wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do any thing, which act or omission results or is likely to result in damage to or destruction or loss of any of Her Majesty's aircraft or aircraft material, or of aircraft or aircraft material of any forces co-operating with Her Majesty's Forces; or
- (c) during a state of war wilfully or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any of Her Majesty's aircraft, or aircraft of any forces co-operating with Her Majesty's Forces,

is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 97.

Inaccurate
certificate.

98. Every person who signs an inaccurate certificate in relation to an aircraft or aircraft material, unless he proves that he took reasonable steps to ensure that it was accurate, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 98.

Low flying.

99. Every person who flies an aircraft at a height less than the minimum height authorized in the circumstances is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 99.

Disobedience
of captain's
orders.

100. (1) Every person who, when in an aircraft, disobeys any lawful command given by the captain of the aircraft in relation to the flying or handling of the aircraft or affecting the safety of the aircraft, whether or not the captain is subject to the Code of Service Discipline, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

National Defence Act

- (2) For the purposes of this section Command in aircraft.
- (a) every person whatever his rank shall when he is in an aircraft be under the command, as respects all matters relating to the flying or handling of the aircraft or affecting the safety of the aircraft, of the captain of the aircraft, whether or not the latter is subject to the Code of Service Discipline; and
- (b) if the aircraft is a glider and is being towed by another aircraft, the captain of the glider shall so long as his glider is being towed be under the command, as respects all matters relating to the flying or handling of the glider or affecting the safety of the glider, of the captain of the towing aircraft, whether or not the latter is subject to the Code of Service Discipline. 1950, c. 43, s. 100.

OFFENCES IN RELATION TO VEHICLES.

101. (1) Every person who

- (a) drives a vehicle of the Canadian Forces recklessly or in a manner Improper driving of vehicles. Rep. and New. 1956, c. 18, s. 9. that is dangerous to any person or property having regard to all the circumstances of the case, or, having charge of and being in or on such a vehicle, causes or by wilful neglect permits it to be so driven;
- (b) while his ability to drive a vehicle of the Canadian Forces is impaired by alcohol or a drug, drives or attempts to drive such a vehicle, whether it is in motion or not; or
- (c) having charge of a vehicle of the Canadian Forces knowingly permits it to be driven by a person whose ability to drive such a vehicle is impaired by alcohol or a drug;

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

(2) For the purposes of paragraph (b) of subsection (1), where a person occupies the seat ordinarily occupied by a driver of a vehicle, he shall be deemed to have attempted to drive such vehicle, unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion.

102. Every person who

- (a) uses a vehicle of the Canadian Forces for an unauthorized purpose; Unauthorized use.
- (b) without authority uses a vehicle of the Canadian Forces for any purpose; or
- (c) uses a vehicle of the Canadian Forces contrary to any regulation, order or instruction,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 102.

OFFENCES IN RELATION TO PROPERTY.

103. Every person who wilfully or negligently or by neglect of or contrary Causing fires. to regulations, orders or instructions, does any act or omits to do any thing, which act or omission causes or is likely to cause fire to occur in any materiel, defence establishment or work for defence is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 103.

National Defence Act

Stealing.

104. (1) Every person who steals is guilty of an offence and on conviction, if at the time of the commission of the offence he was, by reason of his rank, appointment or employment or as a result of any lawful command, entrusted with the custody, control or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to less punishment, and in any other case is liable to imprisonment for a term not exceeding seven years or to less punishment.

Definition.

(2) For the purposes of this section,

- (a) stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, any thing capable of being stolen, with intent
 - (i) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such property or interest,
 - (ii) to pledge the same or deposit it as security,
 - (iii) to part with it under a condition as to its return which the person parting with it may be unable to perform, or
 - (iv) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion;
- (b) stealing is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it;
- (c) the taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment; and
- (d) it is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting.

Things capable of being stolen.

(3) Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order that it may be stolen. 1950, c. 43, s. 104.

Receiving.

105. Every person who receives or retains in his possession any property obtained by the commission of any service offence, knowing such property to have been so obtained, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment. 1950, c. 43, s. 105.

Destruction, loss or improper disposal.

106. Every person who

- (a) wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any public property, non-public property or property of any of Her Majesty's Forces or of any forces co-operating therewith;

National Defence Act

- (b) wilfully destroys, damages or improperly sells any property belonging to another person who is subject to the Code of Service Discipline; or
- (c) sells, pawns or otherwise disposes of any cross, medal, insignia or other decoration granted by or with the approval of Her Majesty,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 106.

107. Every person who

Miscellaneous offences.

- (a) connives at the exaction of an exorbitant price for property purchased or rented by a person supplying property or services to the Canadian Forces;
- (b) improperly demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department, the Canadian Forces or the Defence Research Board;
- (c) receives directly or indirectly, whether personally or by or through any member of his family or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration, either in money or otherwise, from any person, for assisting or favouring any person in the transaction of any business relating to any of Her Majesty's Forces, or to any forces co-operating therewith or to any mess, institute or canteen operated for the use and benefit of members of such forces;
- (d) demands or accepts compensation, consideration, or personal advantage for convoying a vessel entrusted to his care;
- (e) being in command of a vessel or aircraft, takes or receives on board or merchandise that he is not authorized to take or receive on board; or
- (f) commits any act of a fraudulent nature not particularly specified in the Code of Service Discipline,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 107.

OFFENCES IN RELATION TO SERVICE TRIBUNALS.

108. (1) For the purposes of this section, "service tribunal", in addition to the tribunals mentioned in paragraph (36) of section 2, includes a board of inquiry and a commissioner taking evidence under this Act.

"Service tribunal." Rep. and New. R.S.C. 1952, c. 310, s. 2(2).

(2) Every person who

Contempt of service tribunals.

- (a) being duly summoned or ordered to attend as a witness before a service tribunal, makes default in attending;
- (b) refuses to take an oath or make a solemn affirmation lawfully required by a service tribunal to be taken or made;

National Defence Act

- (c) refuses to produce any document in his power or control lawfully required by a service tribunal to be produced by him;
- (d) refuses when a witness to answer any question to which a service tribunal may lawfully require an answer;
- (e) uses insulting or threatening language before or causes any interruption or disturbance in the proceedings of a service tribunal; or
- (f) commits any other contempt of a service tribunal,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment; and where an offence under this section is committed at or in relation to a court martial, that court martial may, under the hand of the president, issue an order that the offender undergo, for a period not exceeding thirty days, a term of imprisonment or detention; and where any such order is issued the offender is not liable to any other proceedings under the Code of Service Discipline in respect of the contempt in consequence of which the order is issued. 1950, c. 43, s. 108.

False
evidence.

109. Every person who, when examined on oath or solemn affirmation before a service tribunal mentioned in section 108, knowingly gives false evidence, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding seven years or to less punishment. 1950, c. 43, s. 109.

OFFENCES IN RELATION TO BILLETING.

Disturb-
ances, etc.,
in billets.

110. Every person who

- (a) ill-treats, by violence, extortion or making disturbance in billets or otherwise, any occupant of a house in which any person is billeted or of any premises in which accommodation for materiel has been provided; or
- (b) fails to comply with regulations in respect of payment of the just demands of the person on whom he or any officer or man under his command is or has been billeted or the occupant of premises on which materiel is or has been accommodated,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 110.

OFFENCES IN RELATION TO ENROLMENT.

Fraudulent
enrolment.

111. Every person who, having been released from Her Majesty's Forces by reason of a sentence of a service tribunal or by reason of misconduct, has afterwards been enrolled in the Canadian Forces without declaring the circumstances of his release, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. 1950, c. 43, s. 111.

False
answers or
false
information.

112. Every person who knowingly

- (a) makes a false answer to any question set forth in any document required to be completed in relation to his enrolment, or

National Defence Act

(b) furnishes any false information or false document in relation to his enrolment, Rep. and New. 1953-54, c. 13, s. 11.
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

113. Every person who is concerned in the enrolment of any other person, and knows or has reasonable cause to believe that by being enrolled such other person commits an offence under this Act, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. Assisting unlawful enrolment.
1950, c. 43, s. 113.

MISCELLANEOUS OFFENCES.

114. Every person who negligently performs a military duty imposed on him is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment. Negligent performance of duties. 1950, c. 43, s. 114.

115. Every person who

- (a) wilfully or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes, or who, being aware of the falsity of a statement or entry in such a document, orders the making or signing thereof;
- (b) when signing a document required for official purposes, leaves blank any material part for which his signature is a voucher; or
- (c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,

Offences in relation to documents.

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment. 1950, c. 43, s. 115.

116. Every person who, upon receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, wilfully and without reasonable excuse disobeys that order is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. Refusing vaccination, etc. 1950, c. 43, s. 116.

117. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions does any act or omits to do any thing, in relation to any thing or substance that may be dangerous to life or property, which act or omission causes or is likely to cause loss of life or bodily injury to any person or causes or is likely to cause damage to or destruction of any property, is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment. Negligent handling of dangerous substances. 1950, c. 43, s. 117.

117A. Every person who conspires with any other person, whether or not such other person is subject to the Code of Service Discipline, to commit an offence Conspiracy. New. 1953-54, c. 13, s. 12.

National Defence Act

offence under the Code of Service Discipline is guilty of an offence and is liable to imprisonment for a term not exceeding seven years or to less punishment.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE.

Offence.

118. (1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every person convicted thereof is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

Not intended
to cover
offences
elsewhere
provided for.

(2) No person may be charged under this section with any offence for which special provision is made in sections 64 to 117 but the conviction of a person so charged is not invalid by reason only of the charge being in contravention of this subsection unless it appears that an injustice has been done to the person charged by reason of the contravention; but the responsibility of any officer for that contravention is not affected by the validity of the conviction.

General.

Rep. and New.
1953-54,
c. 13, s. 13.

(3) An act or omission constituting an offence under section 63, or a contravention by any person of

(a) any of the provisions of this Act;

(b) any regulations, orders or instructions published for the general information and guidance of that Service of the Canadian Forces to which that person belongs, or to which he is attached or seconded; or

(c) any general, garrison, unit, station, standing, local or other orders, is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

Attempts
to commit
offences.

(4) An attempt to commit any of the offences prescribed in sections 64 to 117 is, unless such attempt is in itself an offence punishable under any of those sections, an act, conduct, disorder or neglect to the prejudice of good order and discipline.

Saving
provision.

(5) Nothing in subsection (3) or (4) affects the generality of subsection (1). 1950, c. 43, s. 118.

OFFENCES PUNISHABLE BY ORDINARY LAW.

Service trial
of civil
offences.

119. (1) An act or omission

(a) that takes place in Canada and is punishable under Part XII of this Act, the *Criminal Code* or any other Act of the Parliament of Canada; or

(b) that takes place out of Canada and would, if it had taken place in Canada, be punishable under Part XII of this Act, the *Criminal Code* or any other Act of the Parliament of Canada,

is an offence under this Part and every person convicted thereof is liable to suffer punishment as provided in subsection (2).

Punishment.

(2) Subject to subsection (3), where a service tribunal convicts a person under subsection (1), the service tribunal shall,

(a) if under Part XII of this Act, the *Criminal Code* or other Act of the Parliament of Canada, a minimum penalty is prescribed, impose a

National Defence Act

penalty in accordance with the enactment prescribing that minimum penalty; or

(b) in any other case,

(i) impose the penalty prescribed for the offence by Part XII of this Act, the *Criminal Code* or that other Act, or

(ii) impose dismissal with disgrace from Her Majesty's service or less punishment.

(3) All provisions of the Code of Service Discipline in respect of a punishment for death, imprisonment for two years or more, imprisonment for less than two years, and a fine, apply in respect of penalties imposed under paragraph (a), or subparagraph (i) of paragraph (b) of subsection (2). Ordinary rules apply.

(4) Nothing in this section is in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections 64 to 118 and to impose the punishment for that offence mentioned in the section prescribing that offence. 1950, c. 43, s. 119. Saving provision.

119A. (1) An act or omission that takes place out of Canada and would, under the law applicable in the place where the act or omission occurred, be an offence if committed by a person subject to that law, is an offence under this Part, and every person who is found guilty thereof is liable to suffer punishment as provided in subsection (2). Offences out of Canada. New. 1952-53, c. 24, s. 5(1).

(2) Subject to subsection (3), where a service tribunal finds a person guilty of an offence under subsection (1), the service tribunal shall impose the punishment in the scale of punishments that it considers appropriate, having regard to the punishment prescribed by the law applicable in the place where the act or omission occurred and the punishment prescribed for the same or a similar offence in this Act, the *Criminal Code* or any other Act of the Parliament of Canada. Punishment.

(3) All provisions of the Code of Service Discipline in respect of a punishment of death, imprisonment for two years or more, imprisonment for less than two years, and a fine, apply in respect of punishments imposed under subsection (2). Ordinary rules apply.

(4) Nothing in this section is in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections 64 to 119 and to impose the punishment for that offence mentioned in the section prescribing that offence. Saving provision.

(5) Where an act or omission constituting an offence under subsection (1) contravenes the customs laws applicable in the place where the offence was committed, any officer appointed under the regulations for the purposes of this section may seize and detain any goods by means of or in relation to which he reasonably believes the offence was committed, and if any person is convicted of the offence under subsection (1) such goods may, in accordance with regula- Contravention of laws. New. 1953-54, c. 13, s. 14.

National Defence Act

tions made by the Governor in Council, be forfeited to Her Majesty and may be disposed of as provided by those regulations.

CONVICTION OF COGNATE OFFENCE.

Conviction
of related or
less serious
offences.

120. (1) A person charged with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged with attempting to desert may be found guilty of being absent without leave.

(3) A person charged with any one of the offences prescribed in section 75 may be found guilty of any other offence prescribed in that section.

(4) A person charged with any one of the offences prescribed in section 76 may be found guilty of any other offence prescribed in that section.

(5) A person charged with a service offence may, on failure of proof of an offence having been committed under circumstances involving a higher punishment, be found guilty of the same offence as having been committed under circumstances involving a lower punishment.

(6) Where a person is charged with an offence under section 119 and the charge is one upon which, if he had been tried by a civil court in Canada for that offence, he might have been found guilty of any other offence, he may be found guilty of that other offence. 1950, c. 43, s. 120.

PUNISHMENTS.

Scale of
punishments.

121. (1) The following punishments may be imposed in respect of service offences:

- (a) death;
- (b) imprisonment for two years or more;
- (c) dismissal with disgrace from Her Majesty's service;
- (d) imprisonment for less than two years;
- (e) dismissal from Her Majesty's service;
- (f) detention;
- (g) reduction in rank;
- (h) forfeiture of seniority;
- (i) dismissal of an officer from the ship to which he belongs;
- (j) severe reprimand;
- (k) reprimand;
- (l) fine; and
- (m) minor punishments,
- (n) Repealed. R.S.C. 1952, c. 310, s. 2(3).

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(3).

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(3).

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(3).

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(3).

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale, in this Act referred to as the "scale of punishments".

*National Defence Act**Less Punishment.*

(2) Where a punishment is specified by the Code of Service Discipline as a penalty for an offence, and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression “less punishment” means any one or more of the punishments lower in the scale of punishments than the specified punishment.

Death.

(3) A punishment of death may be imposed only by a General Court Martial, and may be imposed only with the concurrence of at least two-thirds of the members.

*National Defence Act**Imprisonment.*

- (4) The punishment of imprisonment for two years or more or imprisonment for less than two years is subject to the following conditions:
- (a) every person who, on conviction of a service offence, is liable to imprisonment for life or for a term of years or other term, may be sentenced to imprisonment for a shorter term;
- (b) a sentence that includes a punishment of imprisonment for two years or more imposed upon an officer shall be deemed to include a punishment of dismissal with disgrace from Her Majesty's service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
- (c) a sentence that includes a punishment of imprisonment for less than two years imposed upon an officer shall be deemed to include a punishment of dismissal from Her Majesty's service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
- (d) where a service tribunal imposes a punishment of imprisonment for two years or more upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal with disgrace from Her Majesty's service;
- (e) where a service tribunal imposes a punishment of imprisonment for less than two years upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal from Her Majesty's service;
- (f) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal; and
- (g) a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to be a punishment of imprisonment with hard labour, but in the case of a punishment of imprisonment for less than two years, the Minister or such authorities as he may prescribe or appoint for that purpose may order that such punishment shall be without hard labour.

Conditions relating to imposition of punishment of imprisonment.

Dismissal With Disgrace.

- (5) Where a service tribunal imposes a punishment of dismissal with disgrace from Her Majesty's service upon an officer or man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of imprisonment for less than two years.

Accompanying punishment.

National Defence Act

Consequences
of dismissal
with disgrace.

(6) A person upon whom a punishment of dismissal with disgrace from Her Majesty's service has been carried out shall not, except in an emergency or unless that punishment is subsequently set aside or altered, be eligible to ^{serve} ~~ser~~ Her Majesty again in any military or civil capacity.

"A1 22"

Detention.

Conditions
relating to
imposition of
detention.

(7) The punishment of detention is subject to the following conditions,

(a) detention shall not exceed two years and a person sentenced to detention shall not be subject to detention for more than two years consecutively by reason of more than one conviction;

(b) no officer may be sentenced to detention; and

(c) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of detention shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.

Reduction in Rank.

Application.

(8) The punishment of reduction in rank shall apply to officers, warrant officers, chief petty officers, petty officers, non-commissioned officers and leading ratings.

Conditions.

(9) The punishment of reduction in rank shall not

(a) involve reduction to a rank lower than that to which under regulations the offender can be reduced;

(b) in the case of a commissioned officer, involve reduction to a rank lower than commissioned rank; and

(c) in the case of a subordinate officer, involve reduction to a rank lower than an inferior grade of subordinate officer.

Forfeiture of Seniority.

Sentence to
specify
period of
forfeiture.

(10) Where an officer or man has been sentenced to forfeiture of seniority, the service tribunal imposing the punishment shall in passing sentence specify the period for which seniority is to be forfeited.

Dismissal from Ship

Applies only
to Royal
Canadian
Navy.

(11) The punishment of dismissal of an officer from the ship to which he belongs shall apply only to officers of the Royal Canadian Navy.

Fine.

Conditions
relating to
fines.

(12) A fine shall be imposed in a stated amount and shall not exceed, in the case of an officer or man, three months basic pay, and in the case

National Defence Act

of any other person the sum of two hundred dollars, and the terms of payment of a fine shall lie within the discretion of the commanding officer of the person so punished.

Minor Punishments.

(13) Minor punishments shall be such as are prescribed in regulations made by the Governor in Council. Governor in Council prescribes.

Limitation.

(24) The authority of a service tribunal to impose punishments may be limited in accordance with regulations made by the Governor in Council. Authority. 1950, c. 43, s. 121.

SENTENCES.

122. Only one sentence shall be passed on an offender at a trial under the Code of Service Discipline and, where the offender is convicted of more than one offence, the sentence shall be good if any one of the offences would have justified it. 1950, c. 43, s. 122. One sentence only to be passed.

INCARCERATION UNDER MORE THAN ONE SENTENCE.

123. Where a person is under a sentence imposed by a service tribunal that includes a punishment involving incarceration and another service tribunal subsequently passes a new sentence that also includes a punishment involving incarceration, both punishments of incarceration shall, from the date of the pronouncement of the new sentence, run concurrently, but the punishment higher in the scale of punishments shall be served first. 1950, c. 43, s. 123. To be concurrent.

IGNORANCE OF LAW.

124. The fact that a person is ignorant of the provisions of this Act, or of any regulations or of any order or instruction duly notified under this Act, is no excuse for any offence committed by him. 1950, c. 43, s. 124. No excuse.

CIVIL DEFENCES.

125. All rules and principles from time to time followed in the civil courts in proceedings under the *Criminal Code* that would render any circumstances a justification or excuse for any act or omission or a defence to any charge, shall be applicable to any defence to a charge under the Code of Service Discipline, except in so far as such rules and principles are altered by or are inconsistent with this Act. 1950, c. 43, s. 125. Rules of civil courts applicable.

INSANITY AS A DEFENCE.

126. (1) No person shall be convicted of a service offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating Natural imbecility or mental disease.

National Defence Act

the nature and quality of the act or omission, or of knowing that such an act or omission was wrong. 1955, c. 28, s. 5.

Specific delusions.

(2) In respect of a person labouring under specific delusions, but in other respects sane, subsection (1) shall not apply unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

Presumption of sanity.

(3) Every person shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved. 1950, c. 43, s. 126.

PART VI.

ARREST.

AUTHORITY TO ARREST.

General authority.

127. (1) Every person who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence, may be placed under arrest.

Reasonable force authorized.

(2) Every person authorized to effect arrest under this Part may use such force as is reasonably necessary for that purpose. 1950, c. 43, s. 127.

Powers of officers.

128. (1) An officer may, without a warrant, in the circumstances mentioned in section 127, arrest or order the arrest of

- (a) any man;
- (b) any officer of equal or lower rank; and
- (c) any officer of higher rank who is engaged in a quarrel, fray or disorder.

Powers of men.

(2) A man may, without a warrant, in the circumstances mentioned in section 127, arrest or order the arrest of

- (a) any man of lower rank; and
- (b) any man of equal or higher rank who is engaged in a quarrel, fray or disorder.

Arrest of offenders of other Services.

(3) An order given under subsection (1) or subsection (2) shall be obeyed although the person giving the order and the person to whom and the person in respect of whom the order is given do not belong to the same Service, component, unit or other element of the Canadian Forces.

Arrest of persons other than officers or men.

(4) Every person who is not an officer or man, but who was subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence, may without a warrant be arrested or ordered to be arrested by such person as any commanding officer may designate for that purpose. 1950, c. 43, s. 128.

Appointment and powers of specially appointed personnel.

129. Such officers and men as are appointed under regulations for the purposes of this section may

- (a) detain or arrest without a warrant any person who is subject to the Code of Service Discipline, regardless of the rank or status

National Defence Act

of that person, who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence; and

- (b) exercise such other powers for carrying out the Code of Service Discipline as are prescribed in regulations made by the Governor in Council. 1950, c. 43, s. 129.

130. (1) Subject to subsection (2), every commanding officer, and every officer to whom the power of trying a charge summarily has been delegated under subsection (3) of section 136 may by a warrant under his hand authorize any person to arrest any other person triable under the Code of Service Discipline who has committed, or is suspected of or charged under this Act with having committed a service offence. Issue of warrants.

(2) An officer authorized to issue a warrant under this section shall not, unless he has certified on the face of the warrant that the exigencies of the service so require, issue a warrant authorizing the arrest of any officer of rank higher than he himself holds. Limitation.

(3) In any warrant issued under this section the offence in respect of which the warrant is issued shall be stated and the names of more persons than one in respect of the same offence, or several offences of the same nature, may be included. Contents of warrants.

(4) Nothing in this section shall be deemed to be in derogation of the authority that any person, including an officer or man, may have under other sections of this Act or otherwise under the law of Canada to arrest any other person without a warrant. 1950, c. 43, s. 130. Saving provision.

ACTION FOLLOWING ARREST.

131. (1) A person arrested under this Part may forthwith on his apprehension be placed in civil custody or service custody or be taken to the unit or formation with which he is serving or to any other unit or formation of the Canadian Forces; and such force as is reasonably necessary for the purposes of this section may be used. Disposal of person arrested.

(2) An officer or man commanding a guard, guardroom or safeguard or an officer or man appointed under section 129 shall receive and keep a person who is under arrest pursuant to this Act and who is committed to his custody, but it shall be the duty of the officer, man or other person who commits a person into custody to deliver at the time of such committal, or as soon as practical and in any case within twenty-four hours thereafter, to the officer or man into whose custody that person is committed, an account in writing, signed by himself, in which is stated the reason why the person so committed is to be held in custody. Delivery into custody.

(3) An officer or man who, pursuant to subsection (2), receives a person committed to his custody shall, as soon as practical and in any case within twenty-four hours thereafter, give in writing to the officer or man to whom it is his duty to report, the name of that person and an account of the offence Report of custody.

National Defence Act

alleged to have been committed by that person so far as is known and the name and rank of the officer, man or other person by whom the person so committed was placed in custody, accompanied by any account in writing which has been submitted pursuant to subsection (2). 1950, c. 43, s. 131.

LIMITATIONS IN RESPECT OF CUSTODY.

Report of
delay of
trial.

132. (1) Where a person triable under the Code of Service Discipline has been placed under arrest for a service offence and remains in custody for eight days without a summary trial having been held or a court martial for his trial having been ordered to assemble, a report stating the necessity for further delay shall be made by his commanding officer to the authority who is empowered to convene a court martial for the trial of that person, and a similar report shall be forwarded in the same manner every eighth day until a summary trial has been held or a court martial has been ordered to assemble.

Petition in
respect of
delay of
trial.

(2) Every person held in custody in the circumstances mentioned in subsection (1) is, after he has been so held for a total of twenty-eight days without a summary trial having been held or a court martial having been ordered to assemble, entitled to direct to the Minister, or to such authority as the Minister may prescribe or appoint for that purpose, a petition to be freed from custody or for a disposition of the case, and in any event that person shall be so freed when he has been so held for a total of ninety days from the time of his arrest unless the Minister otherwise directs or unless a summary trial has been held or a court martial has been ordered to assemble. 1955, c. 28, s. 6.

Limitation
upon
re-arrest.

(3) A person who has been freed from custody pursuant to subsection (2) shall not be subject to re-arrest for the offence with which he was originally charged, except on the written order of an authority having power to convene a court martial for his trial. 1950, c. 43, s. 132.

PART VII.

SERVICE TRIBUNALS.

APPLICATION.

Commanding
officer.

133. (1) Every reference in this Part to a commanding officer shall be deemed to be a reference to the commanding officer of the accused person, or to such other officer as may, in accordance with regulations, be empowered to act as the commanding officer of the accused person.

Meaning of
ranks where
specified.

(2) Every reference in this Part to the rank of an officer or man shall be construed in accordance with regulations made by the Governor in Council and every such reference shall be deemed to include a person who holds any equivalent relative rank, whether that person is enrolled in, or is attached, seconded or on loan to the Canadian Forces. 1950, c. 43, s. 133.

National Defence Act

INVESTIGATION AND PRELIMINARY DISPOSITION OF CHARGES.

134. Where a charge is laid against a person to whom this Part applies alleging that he has committed a service offence, the charge shall forthwith be investigated in accordance with regulations made by the Governor in Council. 1950, c. 43, s. 134. Immediate investigation required.

135. Where, after investigation, a commanding officer considers that a charge should not be proceeded with, he shall dismiss the charge; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit. 1950, c. 43, s. 135. Dismissal or other disposition.

SUMMARY TRIALS BY COMMANDING OFFICERS.

136. (1) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied: Jurisdiction.

- (a) the accused person is either a subordinate officer or a man below the rank of warrant officer;
- (b) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;
- (c) the commanding officer is not precluded from trying the accused person by reason of his election, under regulations made by the Governor in Council, to be tried by court martial; and
- (d) the offence is not one that in regulations made by the Governor in Council the commanding officer is precluded from trying.

(2) Subject to the conditions set out in this section and in Part V relating to punishments, a commanding officer at a summary trial may pass a sentence in which any one or more of the following punishments may be included: Sentences.

(a) detention for a period not exceeding ninety days subject to the following provisions:

- (i) a punishment of detention imposed by a commanding officer upon a chief petty officer, petty officer, non-commissioned officer or leading rating shall not be carried into effect until approved by an approving authority and only to the extent so approved; and Rep. and New. R.S.C. 1952, c. 310, s. 2(5).

- (ii) where a commanding officer imposes more than thirty days detention, the portion in excess of thirty days shall be effective only if approved by, and to the extent approved by, an approving authority;

(b) reduction in rank, but a punishment of reduction in rank imposed by a commanding officer shall be effective only if approved by, and to the extent approved by, an approving authority; Rep. and New. R.S.C. 1952, c. 310, s. 2(6).

(c) forfeiture of seniority;

(d) severe reprimand;

(e) reprimand;

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(4).
Rep. and New.
R.S.C. 1952,
c. 310, s. 2(4).

National Defence Act

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(4).

(f) a fine not exceeding basic pay for one month; and

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(4).

(g) minor punishments,

(h) Repealed. R.S.C. 1952, c. 310, s. 2 (4).

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale.

Definition of
"approving
authority."

New.
R.S.C. 1952,
c. 310, s. 2(7).

(2a) In subsection (2) "approving authority" means

(a) any officer not below the rank of commodore, brigadier or air commodore; or

(b) an officer not below the naval rank of captain or below the rank of colonel or group captain designated by the Minister as an approving authority for the purposes of this section.

Delegation.

(3) A commanding officer may, subject to regulations made by the Governor in Council and to such extent as the commanding officer deems fit, delegate his powers under this section to any officer under his command, but an officer to whom powers are so delegated may not be authorized to impose punishments other than the following:

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(8).

(a) detention not exceeding fourteen days;

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(8).

(b) severe reprimand;

Rep. and New.
R.S.C. 1952,
c. 310, s. 2(8).

(c) reprimand;

New.
R.S.C. 1952,
c. 310, s. 2(8).

(d) a fine not exceeding basic pay for fifteen days; and

New.
R.S.C. 1952,
c. 310, s. 2(8).

(e) minor punishments.

Evidence
on oath.

(4) Where a commanding officer tries an accused person by summary trial, the evidence shall be taken on oath if the commanding officer so directs or the accused person so requests, and the commanding officer shall inform the accused person of his right so to request.

Approval
of punish-
ments.

(5) Such punishments as are, in regulations made by the Governor in Council, specified as requiring approval before they may be imposed by a commanding officer, shall not be so imposed until approval has been obtained in the manner prescribed in such regulations. 1950, c. 43, s. 136.

SUMMARY TRIALS BY SUPERIOR COMMANDERS.

Jurisdiction.

137. (1) An officer of or above the rank of commodore, brigadier or air commodore, or any other officer prescribed or appointed by the Minister for that purpose, referred to in this section as a "superior commander", may in his discretion try by summary trial an officer below the rank of lieutenant-commander, major or squadron leader, or a warrant officer, charged with having committed a service offence, and in an emergency the Governor in Council may extend the provisions

National Defence Act

of this section to cases where the accused person is of the rank of lieutenant-commander, major or squadron leader.

(2) A superior commander may, with or without hearing the evidence, dismiss a charge if he considers that it should not be proceeded with; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit. Dismissal or other disposition.

(3) Subject to the conditions set out in this section and in Part V relating to punishments, a superior commander at a summary trial may pass a sentence in which any one or more of the following punishments may be included: Sentences.

- (a) forfeiture of seniority; Rep. and New. R.S.C. 1952, c. 310, s. 2(9).
- (b) severe reprimand; Rep. and New. R.S.C. 1952, c. 310, s. 2(9).
- (c) reprimand; and Rep. and New. R.S.C. 1952, c. 310, s. 2(9).
- (d) fine. Rep. and New. R.S.C. 1952, c. 310, s. 2(9).
- (e) Repealed. R.S.C. 1952, c. 310, s. 2 (9).

(4) A superior commander shall not try an accused person who, by reason of an election under regulations made by the Governor in Council, is entitled to be tried by court martial. Election.

(5) Where a superior commander tries an accused person by summary trial, the evidence shall be taken on oath if the superior commander so directs or the accused person so requests, and the superior commander shall inform the accused person of his right so to request. 1950, c. 43, s. 137. Evidence on oath.

CONVENING OF COURTS MARTIAL.

138. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may convene General Courts Martial and Disciplinary Courts Martial. Convening authorities.

(2) An authority who convenes a court martial under subsection (1) may appoint as members of the court martial, officers of the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force or officers of any navy, army or air force, who are attached, seconded or loaned to the Canadian Forces. 1950, c. 43, s. 138. Officers of other Services may be appointed.

GENERAL COURTS MARTIAL.

139. A General Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed any service offence. 1950, c. 43, s. 139. Jurisdiction.

140. (1) A General Court Martial shall consist of not less than five officers and not more than such maximum number of officers as may be prescribed in regulations. Number of members.

(2) The president of a General Court Martial shall be an officer of or above the naval rank of captain or of or above the rank of colonel Appointment of president.

National Defence Act

or group captain and shall be appointed by the authority convening the General Court Martial or by an officer empowered by that authority to appoint the president.

Trial of
commodore,
etc.

(3) Where the accused person is of or above the rank of commodore, brigadier or air commodore, the president of a General Court Martial shall be an officer of or above the rank of the accused person, and the other members of the court martial shall be of or above the naval rank of captain or of above the rank of colonel or group captain.

Trial of
captain, etc.

(4) Where the accused person is of the naval rank of captain or of the rank of colonel or group captain, all of the members of a General Court Martial, other than the president, shall be of or above the rank of commander, lieutenant-colonel or wing commander.

Trial of
commander,
etc.

(5) Where the accused person is a commander, lieutenant-colonel or wing commander, at least two of the members of a General Court Martial, exclusive of the president, shall be of or above the rank of the accused person. 1950, c. 43, s. 140.

Judge
advocate.

141. Such authority as is prescribed for that purpose in regulations shall appoint a person to officiate as judge advocate at a General Court Martial. 1950, c. 43, s. 141.

Ineligibility
to serve on
General
Court
Martial.

142. None of the following persons shall sit as a member of a General Court Martial:

- (a) the officer who convened the court martial;
- (b) the prosecutor;
- (c) a witness for the prosecution;
- (d) the commanding officer of the accused person;
- (e) a provost officer;
- (f) an officer who is under the age of twenty-one years;
- (g) an officer below the naval rank of lieutenant, the army rank of captain or the air force rank of flight lieutenant; or
- (h) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded. 1950, c. 43, s. 142.

DISCIPLINARY COURTS MARTIAL.

Jurisdiction.

143. Subject to any limitations prescribed in regulations made by the Governor in Council, a Disciplinary Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed any service offence. 1950, c. 43, s. 143.

Punishment.

144. A Disciplinary Court Martial shall not pass a sentence including a punishment higher in the scale of punishments than dismissal with disgrace from Her Majesty's service, or higher than such other punishments as may be prescribed in regulations; but no such other punishment shall be higher in the scale of punishments than dismissal with disgrace from Her Majesty's service. 1950, c. 43, s. 144.

National Defence Act

145. A Disciplinary Court Martial shall consist of not less than three officers and not more than such maximum number of officers as may be prescribed in regulations. 1950, c. 43, s. 145. Number of members.

146. (1) The president of a Disciplinary Court Martial shall be appointed by the authority convening the Disciplinary Court Martial or by an officer empowered by that authority to appoint the president. Appointment of president.

(2) The president of a Disciplinary Court Martial shall be an officer of or above the rank of lieutenant-commander, major or squadron leader or of or above such higher rank as may be prescribed in regulations. 1950, c. 43, s. 146. Rank of president.

147. Such authority as may be prescribed for that purpose in regulations may appoint a person to officiate as judge advocate at a Disciplinary Court Martial. 1950, c. 43, s. 147. Judge advocate.

148. None of the following persons shall sit as a member of a Disciplinary Court Martial, Ineligibility to serve on Disciplinary Court Martial.

- (a) the officer who convened the court martial;
- (b) the prosecutor;
- (c) a witness for the prosecution;
- (d) the commanding officer of the accused person;
- (e) a provost officer;
- (f) an officer who is under the age of twenty-one years; or
- (g) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded. 1950, c. 43, s. 148.

STANDING COURTS MARTIAL.

149. (1) The Governor in Council may in an emergency establish Standing Courts Martial and each such court martial shall consist of one officer, to be called the president, who is or has been a barrister or advocate of more than three years standing and who shall be appointed by or under the authority of the Minister. Constitution.

(2) Subject to any limitations prescribed in regulations, a Standing Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed a service offence, but a Standing Court Martial shall not pass a sentence including any punishment higher in the scale of punishments than imprisonment for less than two years. 1950, c. 43, s. 149. Powers.

REPRESENTATION OF ACCUSED.

150. At any proceedings before a court martial the accused person has the right to be represented in such manner as shall be prescribed in regulations made by the Governor in Council. 1950, c. 43, s. 150. Defence.

National Defence Act

ADMISSION TO COURTS MARTIAL.

- 151.** (1) Subject to subsections (2) and (3), courts martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the trial.
- Trials public.
- (2) Where the authority who convenes a court martial or the president of a court martial considers that it is expedient in the interests of public safety, defence or public morals that the public should be excluded during the whole or any part of a trial, either of them may make an order to that effect, and any such order shall be recorded in the minutes of the proceedings of the court martial.
- Exception.
- (3) Witnesses, other than the prosecutor and the accused person and his representative, shall not be admitted to a trial, except when under examination or by specific leave of the president of the court martial.
- Witnesses.
- (4) The president may, on any deliberation among the members, cause a court martial to be cleared of any other persons in accordance with regulations. 1950, c. 43, s. 151.
- Clearing court.

RULES OF EVIDENCE.

- 152.** (1) The rules of evidence at a trial by court martial held in Canada shall be the same as those from time to time followed in proceedings under the *Criminal Code* in civil courts in the province of Canada in which the court martial is held, except in so far as such rules are inconsistent with this Act or regulations.
- Trial in Canada.
- (2) Where a court martial is held out of Canada or in a ship beyond the territorial limits of Canada, the rules of evidence shall be the same as those from time to time followed in proceedings under the *Criminal Code* in civil courts in the province in which the accused person states to the court martial that his ordinary place of residence is situated, except in so far as such rules are inconsistent with this Act or regulations.
- Trial outside Canada.
- (3) Where, in the circumstances mentioned by subsection (2), an accused person states that his ordinary place of residence is situated out of Canada, or makes no statement as to his ordinary place of residence, the court martial shall apply the rules of evidence from time to time followed in proceedings under the *Criminal Code* in civil courts in the province in which the capital city of Canada is situated, except in so far as such rules are inconsistent with this Act or regulations.
- Special case.
- (4) A court martial, wherever held, shall not as respects the conduct of its proceedings or the reception or rejection of evidence or as respects any other matter or thing, be subject to any Act, law or regulation not in force in Canada. 1950, c. 43, s. 152.
- Exclusion.
- 153.** (1) Such classes of documents and records as are prescribed in regulations made by the Governor in Council may be admitted as evidence of the facts therein stated at trials by court martial or in any proceedings before civil courts arising out of such trials, and the
- Admission of documents and records.

National Defence Act

conditions governing the admissibility of such classes of documents and records or copies thereof shall be as prescribed in those regulations.

(2) A court martial may receive, as evidence of the facts therein stated, statutory declarations made in the manner prescribed by the *Canada Evidence Act*, subject to the following conditions, Statutory declarations admissible.

- (a) where the declaration is one that the prosecutor wishes to introduce, a copy shall be served upon the accused person at least seven days before the trial;
- (b) where the declaration is one that the accused person wishes to introduce, a copy shall be served upon the prosecutor at least three days before the trial; and
- (c) at any time before the trial the party upon whom the copy of the declaration has been served under paragraph (a) or (b) may notify the opposite party that he will not consent to the declaration being received by the court martial, and in that event the declaration shall not be received. 1950, c. 43, s. 153.

WITNESSES AT COURTS MARTIAL.

154. (1) The commanding officer of the accused person, the authority who convenes a court martial, or, after the assembly of the court martial, the president, shall take all necessary action to procure the attendance of the witnesses whom the prosecutor and the accused person request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured, but nothing in this subsection shall require the procurement of the attendance of any witnesses, the request for whose attendance is deemed by any such commanding officer, authority who convenes a court martial or president to be frivolous or vexatious. Procurement of attendance of witnesses.

(2) Where a request by the accused person for the attendance of a witness is deemed to be frivolous or vexatious, the attendance of that witness, if his attendance, having regard to the exigencies of the service, can reasonably be procured, shall be procured if the accused person pays in advance the fees and expenses of the witness at the rates prescribed in regulations, and if at the trial the evidence of the witness proves to be relevant and material, the president of the court martial or the authority who convened the court martial shall order that the accused person be reimbursed in the amount of the fees and expenses of the witness so paid. Procurement of attendance in exceptional cases.

(3) Nothing in this section limits the right of the accused person to procure and produce at the trial at his own expense such witnesses as he may desire, if the exigencies of the service permit. 1950, c. 43, s. 154. Rights of accused preserved.

EVIDENCE OF COMMISSION

155. (1) Where it appears to the Judge Advocate General, or to such person as he may appoint for that purpose, Appointment of commissioner.

National Defence Act

Rep. and New.
1956, c. 18,
s. 10.

- (a) that the attendance at a trial by court martial of a witness for the prosecution is not readily obtainable because the witness is ill or is absent from the country in which the trial is held, or that the attendance of a witness for the accused person is not readily obtainable for any reason, or
- (b) that the attendance of a witness for the prosecution at a trial by court martial in any place out of Canada is not readily obtainable and under the law of that place there is no provision for compulsory attendance of that witness at such court martial,

the Judge Advocate General, or such person as he may appoint for that purpose, may appoint any officer or other qualified person, in this section referred to as a "commissioner", to take the evidence of the witness under oath.

Admissi-
bility of
commission
evidence.

(2) The document containing the evidence of a witness, taken under subsection (1) and duly certified by the commissioner, is admissible in evidence at a court martial to the same extent and subject to the same objections as if the witness had given that evidence in person at the trial.

Personal
attendance
of witness.

(3) Where in the opinion of the president of a court martial, a witness whose evidence has been taken on commission, should in the interests of justice appear and give evidence before the court martial and that witness is not too ill to attend the trial and is not outside the country in which the trial is held, the president may require the attendance of that witness.

(4) Repealed. R.S.C. 1952, c. 310, s. 2 (10).

Cross-
examination.
Re-numbered.
R.S.C. 1952,
c. 310, s. 2(10).

(4) At any proceedings before a commissioner the accused person and the prosecutor are entitled to be represented and the persons representing them have the right to examine and cross-examine any witness.

Copy to
accused.
Re-numbered.
R.S.C. 1952,
c. 310, s. 2(10).

(5) The accused person shall, at least twenty-four hours before it is admitted at the court martial, be furnished without charge with a copy of the document mentioned in subsection (2). 1950, c. 43, s. 155.

VIEW BY COURT MARTIAL.

President
may
authorize.

156. A court martial may, where the president considers it necessary, view any place, thing or person. 1950, c. 43, s. 156.

OBJECTION TO MEMBERS OF COURTS MARTIAL.

Right of
accused.

157. (1) When a court martial is assembled, the names of the president and other members shall be read over to the accused person who shall be asked if he objects to be tried by any of them, and if he objects the court martial shall decide whether the objection shall be allowed.

Replacements.

(2) The procedure for the replacement of a president of a court martial or any other members of a court martial in respect of whom an objection has been allowed shall be as prescribed in regulations. 1950, c. 43, s. 157.

OATHS AT COURTS MARTIAL.

Persons
required to
take oath.

158. (1) At every court martial an oath shall be administered to each of the following persons:

- (a) the president and other members of the court martial;

National Defence Act

- (b) the judge advocate;
- (c) Repealed. R.S.C. 1952, c. 310, s. 2 (11).
- (c) court reports; Relettered. R.S.C. 1952, c. 310, s. 2 (11)
- (d) interpreters; and Relettered. R.S.C. 1952, c. 230, s. 2 (11).
- (e) witnesses, Relettered. R.S.C. 1952, c. 310, s. 2 (11).

in the manner and in the forms prescribed in regulations.

(2) If a person to whom an oath is required to be administered under subsection (1), Affirmation in lieu of oath.

- (a) objects to take the oath and the president of the court martial is satisfied of the sincerity of the objection; or
- (b) is objected to as incompetent to take the oath and the president of the court martial is satisfied that the oath would have no binding effect on the conscience of that person,

the president shall require that person, instead of being sworn, to make a solemn affirmation in the form prescribed in regulations and, for the purposes of this Act, a solemn affirmation shall be deemed to be an oath. 1950, c. 43, s. 158.

ADJOURNMENT AND DISSOLUTION.

159. A court martial may be adjourned whenever the president considers adjournment desirable. 1950, c. 43, s. 159. President may adjourn.

160. (1) Where, after the commencement of a trial, a court martial is by death or otherwise reduced below the minimum number of members prescribed in this Act, it shall be deemed to be dissolved. Dissolution when numbers reduced.

(2) Where, after the commencement of a trial, the president of a court martial dies or for any other reason cannot attend and the court martial is not thereby reduced below the minimum number of members prescribed in this Act, the authority who convened the court martial may appoint the senior member of the court martial to be the president and the trial shall proceed; but if the senior member of the court martial is not of sufficient rank to be appointed president, the court martial shall be deemed to be dissolved. President unable to attend.

(3) Where, on account of the illness of the accused person, it is impossible to continue the trial, the court martial shall be dissolved. Illness of accused.

(4) Where a court martial is dissolved pursuant to this section, the accused person may be dealt with as if the trial had never commenced. 1950, c. 43, s. 160. Effect of dissolution.

AMENDMENT OF CHARGES.

161. (1) Where at any time during a trial by court martial, it appears to the president that there is a technical defect in a charge that does not affect the substance of the charge, the president, if he is of the opinion that the accused person will not be prejudiced in the conduct of his defence by an amendment, shall make such order for the amendment of the charge as he considers necessary to meet the circumstances of the case. May be made if no injustice.

National Defence Act

Procedure. (2) Where an amendment to the charge has been made, the president of the court martial shall, if the accused person so requests, adjourn the court martial for such period as the president considers necessary to enable the accused person to meet the charge so amended.

Minute of amendment. (3) Where a charge is amended, a minute of the amendment shall be endorsed upon the charge sheet and signed by the president of the court martial; and the charge sheet so amended shall be treated for the purposes of the trial and all proceedings in connection therewith as being the original charge sheet. 1950, c. 43, s. 161.

DECISIONS BY COURTS MARTIAL.

Majority vote. **162.** (1) Subject to subsection (3) of section 121 and subsection (4) of this section, the finding and the sentence of a court martial and the decision in respect of any other matter or question arising after the commencement of the trial shall be determined by the vote of a majority of the members. 1955, c. 28, s. 7.

Equality on finding. (2) In the case of an equality of votes on the finding, the accused shall be found not guilty.

Equality on sentence. (3) In the case of an equality of votes on the sentence or on any other matter or question arising after the commencement of the trial, except the finding, the president of the court martial shall have a second or casting vote. 1950, c. 43, s. 162.

Questions of law. (4) Where a judge advocate has been appointed to officiate at a court martial, he may, in such circumstances and subject to such conditions and procedures as are prescribed in regulations made by the Governor in Council, determine questions of law arising before or after the commencement of the trial. 1955, c. 28, s. 7.

SIMILAR OFFENCES

May be considered in imposing sentence. **163.** A court martial may at the request of the offender and in its discretion take into consideration, for the purposes of sentence, other service offences, similar in character to that of which the offender has been found guilty, that are admitted by him, as if he had been charged with, tried on and found guilty of such offences; but the sentence of the court martial shall not include any punishment higher in the scale of punishments than the punishment that might be imposed in respect of any offence of which the offender has been found guilty. 1950, c. 43, s. 163.

PRONOUNCEMENT OF FINDINGS AND SENTENCE.

Effect. **164.** The finding and sentence of a court martial shall at the conclusion of the trial be pronounced to the offender in open court and he shall be under the sentence as of the date of the pronouncement thereof. 1950, c. 43, s. 164.

RECOMMENDATIONS TO CLEMENCY.

Applicable in certain cases only. **165.** Where a court martial has found a person guilty of an offence, prescribed in section 64, 65, 66 or 67, for which the punishment of death is mandatory, or in section 83, for which the punishment of dismissal

National Defence Act

with disgrace from Her Majesty's service or dismissal from Her Majesty's service is mandatory, or an offence to which paragraph (a) of subsection (2) of section 119 applies, the court martial may recommend clemency and the recommendation shall be attached to and form part of the minutes of the proceedings of the trial. 1950, c. 43, s. 165.

DECISION WHERE ACCUSED INSANE AT TRIAL.

166. (1) Where at any time after a trial by court martial commences and before the finding of the court martial is made, it appears that there is sufficient reason to doubt whether the accused person is then, on account of insanity, capable of conducting his defence, an issue shall be tried and decided by that court martial as to whether the accused person is or is not then, on account of insanity, unfit to stand or continue his trial. Trial of issue of insanity.

(2) Where the decision of the court martial on an issue mentioned in subsection (1) is that the accused person is not then unfit to stand or continue his trial, the court martial shall proceed to try that person as if no such issue had been tried. Trial proceeds where accused sane.

(3) Where the decision of a court martial held in Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order the accused person to be kept in strict custody, and he shall be kept in custody until the pleasure of the Lieutenant-Governor of the province is known and the Lieutenant-Governor may make an order for the safe custody of such person, as if the same decision had been made in respect of him by a civil court in the province of Canada in which that court martial was held. Disposal of accused in Canada.

(4) Where the decision of a court martial held out of Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be kept in custody until the pleasure of the Lieutenant-Governor of the province is known and the Lieutenant-Governor may make an order for the safe custody of such person, as if the same decision had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit. Disposal of accused out of Canada.

(5) No decision of a court martial that an accused person is unfit to stand or continue his trial by reason of insanity prevents that person being afterwards tried in respect of the offence or of any other offence of which he might have been found guilty on the same charge; and the period during which he is unfit to stand or continue his trial by reason of insanity shall not be taken into account in applying to him in respect of that offence the provisions of section 60. 1950, c. 43, s. 166. Saying of jurisdiction.

National Defence Act

DECISION WHERE ACCUSED INSANE WHEN OFFENCE COMMITTED.

Special finding.

167. (1) Where evidence is given at a court martial that a person charged with a service offence was insane at the time of the commission of that offence, the court martial, if it finds that person not guilty of the offence, shall make a special finding as to whether he was insane at the time of the commission of the offence and whether he was found not guilty by reason of insanity.

Disposal of accused in Canada.

(2) Where a court martial held in Canada makes a special finding under subsection (1) that an accused person was insane, it shall order that person to be kept in strict custody and he shall be kept in custody until the pleasure of the Lieutenant-Governor of the province is known and the Lieutenant-Governor may make an order for the safe custody of such person, as if the same finding had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

Disposal of accused out of Canada.

(3) Where a court martial held out of Canada makes a special finding under subsection (1) that an accused person was insane, it shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be kept in custody until the pleasure of the Lieutenant-Governor of the province is known and the Lieutenant-Governor may make an order for the safe custody of such person, as if the same finding had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit. 1950, c. 43, s. 167.

MINUTES OF PROCEEDINGS OF COURTS MARTIAL.

Delivery to offender.

168. A copy of the minutes of the proceedings of a court martial and of the form of the Statement of Appeal mentioned in section 188 shall be delivered without charge as soon as practical after the conclusion of the trial to the person who has been tried and found guilty by that court martial. 1950, c. 43, s. 168.

PART VIII.

PROVISIONS APPLICABLE TO FINDINGS AND SENTENCES AFTER TRIAL.

IMPRISONMENT AND DETENTION.

Commencement.

169. (1) Subject to subsection (3) and sections 176 and 177, the term of a punishment of imprisonment for two years or more, imprisonment for less than two years or detention, shall commence on the date upon which the service tribunal pronounces sentence upon the offender.

National Defence Act

(2) The only time that shall be reckoned toward the completion of a term of punishment of imprisonment for two years or more, imprisonment for less than two years or detention shall be the time that the offender spends in civil custody or service custody while under the sentence in which that punishment is included. Time counted.

(3) Where a punishment mentioned in subsection (2) cannot lawfully be carried out by reason of a vessel being at sea or in a port at which there is no suitable place of incarceration, the offender shall as soon as practical, having regard to the exigencies of the service, be sent to a place where the punishment can lawfully be carried out, and the period of time prior to the date of arrival of the offender at that place shall not be reckoned toward the completion of the term of the punishment. Special case. 1950, c. 43, s. 169.

169A. (1) Such places as are designated by the Minister for the purpose shall be service prisons and detention barracks and any hospital or other place for the reception of sick persons to which a person who is a service convict, service prisoner or service detainee has been admitted shall, as respects that person, be deemed to be part of the place to which he has been committed. Service prisons and detention barracks. New. 1956, c. 18, s. 11.

(2) The nature of and the manner of imposing corrective measures for breach of the regulations, orders and rules applicable in respect of service prisons and detention barracks by a person committed thereto as the result of a sentence passed upon him, and the terms and conditions of remission for good conduct of any part of a punishment involving incarceration, shall be as prescribed in regulations made by the Governor in Council. Corrective disciplinary measures for service prisons and detention barracks. New. 1956, c. 18, s. 11.

(3) Corrective measures referred to in subsection (2) shall not include whipping or paddling or any of the punishments referred to in paragraphs (a) to (l) of subsection (1) of section 121, and such corrective measures shall not be imposed so as to increase the duration of any punishment involving a term of incarceration. Limitations. New. 1956, c. 18, s. 11.

PUNISHMENTS REQUIRING APPROVAL.

170. (1) A punishment of death imposed by a court martial is subject to approval by the Governor in Council and shall not be carried out unless so approved. Death.

(2) A punishment of dismissal with disgrace from Her Majesty's service or of dismissal from Her Majesty's service, whether it is expressly included in the sentence passed by a service tribunal or whether it is deemed to be included in the sentence pursuant to paragraph (b) or paragraph (c) of subsection (4) of section 121 is subject to approval by the Minister or such authorities as are prescribed in regulations and shall not be carried out unless so approved; but any punishment of imprisonment for two years or more, imprisonment for less than two years or detention included in the sentence shall commence and be carried out under section 169 as if the sentence had not included a Dismissal.

National Defence Act

punishment of dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service, as the case may be.

Effective
date of
dismissal.

(3) A punishment of dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service shall be deemed to be carried out as of the date upon which the release of the offender from the Canadian Forces is effected.

Substitution
where
punishment
not
approved.

(4) An authority mentioned in section 173 has power to substitute a new punishment for

- (a) a punishment of death that has not been approved under subsection (1);
- (b) a punishment of dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service that has not been approved under subsection (2); or
- (c) a punishment, imposed by a commanding officer at a summary trial, that has not been approved under subsection (2) or (5) of section 136, as the case may be. 1950, c. 43, s. 170.

QUASHING OF FINDINGS.

Authority.

171. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may quash any finding of guilty made by a service tribunal.

Effect upon
sentence of
complete
quashing.

(2) Where, after a finding of guilty has been quashed, no other finding of guilty remains, the whole of the sentence passed by the service tribunal ceases to have force and effect.

Effect upon
sentence of
partial
quashing.

(3) Where, after a finding of guilty has been quashed another finding of guilty remains, and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the findings of guilty which remain, or is, in the opinion of the authority who quashed the finding, unduly severe, he shall, subject to the conditions set out in section 175, substitute such new punishment or punishments as he considers appropriate. 1950, c. 43, s. 171.

SUBSTITUTION OF FINDINGS.

Authority.

172. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may

- (a) substitute a new finding for any finding of guilty, made by a service tribunal, that is illegal or cannot be supported by the evidence, if the new finding could validly have been made by the service tribunal on the charge and if it appears that the service tribunal was satisfied of the facts establishing the offence specified or involved in the new finding;
- (b) substitute for the finding of guilty made by a service tribunal a new finding of guilty of some other offence if

National Defence Act

(i) the tribunal could on the charge have found the offender guilty under section 120 of that other offence, or
(ii) the tribunal could have found the offender guilty of that other offence on any alternative charge that was laid,
and it appears that the facts proved him guilty of that other offence.
1955, c. 28, s. 8.

(2) Where a new finding has been substituted for a finding made by a service tribunal and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the new finding, or is, in the opinion of the authority who substituted the new finding, unduly severe, he shall, subject to the conditions set out in section 175, substitute such new punishment or punishments as he considers appropriate. 1950, c. 43, s. 172.

NEW TRIAL.

172A. (1) Where a service tribunal has found a person guilty of an offence and the Judge Advocate General certifies that in his opinion a new trial is

National Defence Act

advisable by reason of an irregularity in law in the proceedings before the service tribunal, the Minister may set aside the finding of guilty and direct a new trial, in which case that person shall be tried again for that offence as if no previous trial had been held.

(2) Where at a new trial held pursuant to this section or section 199 a person is found guilty ^{Punishment.}

- (a) the new punishment shall not be higher in the scale of punishments than the punishment imposed by the service tribunal in the first instance;
- (b) if the new punishment includes a term of incarceration, there shall be deducted from that term any time during which the offender had been incarcerated following the pronouncement of the previous sentence; and
- (c) if the new punishment is in the same paragraph in the scale of punishments as the punishment imposed by the service tribunal in the first instance, the new punishment shall not be in excess of the previous punishment.

(3) The Minister may dispense with any new trial directed under this section or under section 191. 1955, c. 28, s. 9. ^{Minister may dispense.}

SUBSTITUTION OF PUNISHMENTS.

173. Where a service tribunal has passed a sentence in which is included an illegal punishment, the Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section 175, substitute for the illegal punishment such new punishment or punishments as he considers appropriate. 1950, c. 43, s. 173. ^{Authority.}

MITIGATION, COMMUTATION AND REMISSION OF PUNISHMENTS.

174. The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section 175, mitigate, commute or remit any or all of the punishments included in a sentence passed by a service tribunal. 1950, c. 43, s. 174. ^{Authority.}

CONDITIONS APPLICABLE TO NEW PUNISHMENTS.

175. The following conditions apply where under this Act a new punishment, by way of substitution or commutation, replaces a punishment imposed by a service tribunal, ^{Limitation upon new punishments.}

- (a) the new punishment shall not be any punishment that could not legally have been imposed by the service tribunal on the charges of which the offender was found guilty and in respect of which the findings have not been quashed or set aside by way of substitution;
- (b) the new punishment shall not be higher in the scale of punishments than the punishment imposed by the service tribunal in

National Defence Act

the first instance and, if the sentence passed by the service tribunal included a punishment of incarceration, the new punishment shall not involve a period of incarceration exceeding the period comprised in that sentence;

- (c) where the new punishment is detention and the punishment that it replaces is imprisonment for two years or more or imprisonment for less than two years, the term of detention from the date of alteration shall in no case exceed the term of imprisonment remaining to be served, and in any event shall not exceed a term of two years; and
- (d) where the offence of which a person has been found guilty by a service tribunal is an offence, prescribed in section 64, 65, 66 or 67, for which the punishment of death is mandatory, or in section 83, for which the punishment of dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service is mandatory, or an offence to which paragraph (a) of subsection (2) of section 119 applies, the punishment may, subject to this section, be altered to any one or more of the punishments lower in the scale of punishments than the punishment provided for in the enactment prescribing the offence. 1950, c. 43, s. 175.

EFFECT OF NEW PUNISHMENTS.

Ordinary
provisions
to apply.

176. Where under the authority of this Act, a new punishment, by reason of substitution or commutation, replaces a punishment imposed by a service tribunal, the new punishment has force and effect as if it had been imposed by the service tribunal in the first instance and the provisions of the Code of Service Discipline shall apply accordingly; but where the new punishment involves incarceration, the term of the new punishment shall be reckoned from the date of substitution or commutation, as the case may be. 1950, c. 43, s. 176.

SUSPENSION OF IMPRISONMENT OR DETENTION.

Authority.

177. (1) Where an offender has been sentenced to imprisonment for two years or more, imprisonment for less than two years or detention, the carrying into effect of the punishment may be suspended by the Minister, or such other authorities as he may prescribe or appoint for that purpose; and the Minister or any authority so prescribed or appointed is referred to in this section as a "suspending authority".

Postpone-
ment of
committal.

(2) Where, in the case of an offender upon whom any punishment mentioned in subsection (1) has been imposed, suspension of the punishment has been recommended, the authority empowered to commit the offender to a penitentiary, civil prison, service prison or detention barrack, as the case may be, may postpone committal until directions of a suspending authority have been obtained.

National Defence Act

(3) A suspending authority may, in the case of an offender upon whom any punishment mentioned in subsection (1) has been imposed, suspend the punishment whether or not the offender has already been committed to undergo that punishment. Suspension possible at any time.

(4) Where a punishment is suspended before the offender has been committed to undergo the punishment, he shall, if in custody, be discharged from custody and the term of the punishment shall not commence until the offender has been ordered to be committed to undergo that punishment. Effect of suspension before committal.

(5) Where a punishment is suspended after the offender has been committed to undergo the punishment, he shall be discharged from the place in which he is incarcerated and the currency of the punishment shall be arrested from the day on which he is so discharged, until he is again ordered to be committed to undergo that punishment. Effect of suspension after committal.

(6) Where a punishment has been suspended, it may at any time, and shall at intervals of not more than three months, be reviewed by a suspending authority and if on such review it appears to the suspending authority that the conduct of the offender, since the punishment was suspended, has been such as to justify a remission of the punishment, he shall remit it. Review and remission.

(7) A punishment, except a punishment referred to in subsection (10), that has been suspended shall be deemed to be wholly remitted on the expiration of a period, commencing on the day the suspension was ordered, equal to the term of the punishment less any time during which the offender has been incarcerated following pronouncement of the sentence, unless the punishment has been put into execution prior to the expiration of that period. 1955, c. 28, s. 10. Automatic remission of punishments not exceeding 30 days' detention.

(8) A suspending authority may, at any time while a punishment is suspended, direct the authority who is empowered to commit the offender to commit him, and from the date of the committal order that punishment ceases to be suspended. Committal after suspension.

(9) Where a punishment that has been suspended under this section is put into execution, the term of the punishment shall be deemed to commence on the date upon which it is put into execution, but there shall be deducted from the term any time during which the offender has been incarcerated following pronouncement of the sentence. 1950, c. 43, s. 177. Term where suspended punishment put into execution.

(10) A punishment of detention not exceeding thirty days that has been suspended shall be deemed to be wholly remitted upon the expiration of one year commencing on the day the suspension was ordered, unless the punishment has been put into execution prior to the expiration of that period. 1955, c. 28, s. 10.

National Defence Act

COMMITTAL TO IMPRISONMENT OR DETENTION

178. (1) The Minister may prescribe or appoint authorities for the purposes of this section and any such authority is referred to in this section as a "committing authority".

(2) Repealed. 1956, c. 18, s. 12.

(3) A committal order, in such form as is prescribed in regulations, made by a committing authority is a sufficient warrant for the committal of a service convict, service prisoner or service detainee to any lawful place of confinement.

(4) A committing authority may from time to time by warrant order that a service convict, service prisoner or service detainee shall be transferred from the place to which he has been committed to undergo his punishment to any other place in which that punishment may lawfully be put into execution.

(5) Until he is delivered to the place where he is to undergo his punishment or while he is being transferred from one such place to another such place, a service convict, service prisoner or service detainee may be held in any place, either in service custody or in civil custody or at one time in service custody and at another time in civil custody, as occasion may require, and may be transferred from place to place by any mode of conveyance, under such restraint as is necessary for his safe conduct.

(6) Where a punishment of imprisonment for two years or more is to be put into execution, the service convict shall as soon as practical be committed to a penitentiary, there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service convict be committed to a service prison there to undergo his punishment or part of his punishment, and where a service convict has undergone part of his punishment in a service prison and a committing authority then orders him to be committed to a penitentiary, the service convict may be so committed notwithstanding that the unexpired portion of the term of his punishment is less than two years.

(7) Where a punishment of imprisonment for less than two years is to be put into execution, the service prisoner shall as soon as practical be committed to a civil prison there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service prisoner be committed to a service prison or detention barrack there to undergo his punishment or part of his punishment.

(8) Where a punishment of detention is to be put into execution, the service detainee shall as soon as practical be committed to a detention barrack there to undergo his punishment. 1950, c. 43, s. 178.

National Defence Act

TEMPORARY REMOVAL FROM INCARCERATION.

Authority
required.

179. Where the exigencies of the service so require, a service convict, service prisoner or service detainee may, by an order made by a committing authority mentioned in section 178, be removed temporarily from the place to which he has been committed for such period as may be specified in that order but, until his return to that place, he shall be retained in service custody or civil custody, as occasion may require, and no further committal order is necessary upon his return to that place. 1950, c. 43, s. 179.

RULES APPLICABLE TO SERVICE CONVICTS AND SERVICE PRISONERS.

Rules of
peniten-
tiaries
and civil
prisons
to apply.

180. While a service convict is undergoing punishment in a penitentiary or a service prisoner is undergoing punishment in a civil prison, he shall be dealt with in the same manner as other prisoners in the place where he is undergoing punishment, and all rules applicable in respect of a person sentenced by a civil court to imprisonment in a penitentiary or civil prison, as the case may be, in so far as circumstances permit, apply accordingly; but a service convict undergoing punishment in a penitentiary or a service prisoner undergoing punishment in a civil prison shall not be discharged therefrom until the expiration of the term of his punishment, as reduced for good conduct by virtue of any rules in effect in that penitentiary or civil prison, unless an authority mentioned in section 174 or section 177 orders that he be discharged therefrom prior to the expiration of the term of his punishment. 1950, c. 43, s. 180.

VALIDITY OF DOCUMENTS.

Errors
in form
may be
corrected.

181. The custody of a service convict, service prisoner or service detainee is not illegal by reason only of informality or error in or in respect of a document containing a warrant, order or direction issued in pursuance of this Act, or by reason only that such document deviates from the prescribed form; and any such document may be amended appropriately at any time by the authority who issued it in the first instance or by any other authority empowered to issue documents of the same nature. 1950, c. 43, s. 181.

INSANITY DURING IMPRISONMENT OR DETENTION.

Insane
persons in
peniten-
tiaries or
civil
prisons.

182. A service convict or service prisoner who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a penitentiary or a civil prison, shall be treated in the same manner as if he were a person undergoing

National Defence Act

a term of imprisonment in such penitentiary or civil prison by virtue of the sentence of a civil court. 1950, c. 43, s. 182.

183. A service convict, service prisoner or service detainee who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a service prison or detention barrack, may, in the discretion of the commanding officer of that service prison or detention barrack, be made available to the Lieutenant-Governor of the province in which the service prison or detention barrack is situated, in order that he may be treated in the manner provided for in the provisions of the *Criminal Code* relating to the removal of any person imprisoned in any prison other than a penitentiary, who is insane, mentally ill, or mentally deficient, to a place of safe keeping, and, pending action under those provisions, he shall be kept in strict custody until his case has been disposed of under those provisions, whether or not his term of imprisonment or detention has expired. 1950, c. 43, s. 183.

Insane persons in service prisons or detention barracks.

TRANSFER OF OFFENDERS.

183A. (1) A person who has been found guilty of an offence by a civil court in Canada, or by a civil or military tribunal of any country other than Canada, and sentenced to a term of incarceration may, with the approval of the chief of staff of the service with which he was serving at the time of the conviction or some officer designated by him, be transferred to the custody of the appropriate civil or military authorities of Canada for incarceration under this Act, and any person so transferred may, in lieu of the incarceration to which he was sentenced, be imprisoned or detained for the term or the remainder of the term of incarceration to which he was sentenced as though he had been sentenced for that term by a service tribunal, and the provisions of this Part are applicable in respect of every person so transferred as though he had been so sentenced.

Transfer of offenders. New. 1952-53, c. 24, s. 5(2).

(2) A person who has been found guilty of an offence by a civil court in Canada shall not be transferred under subsection (1)

Restriction.

- (a) without the consent of the Attorney General of the province in which he is incarcerated if he was sentenced by the civil court for a term of less than two years, or
- (b) without the consent of the Attorney General of Canada if he was sentenced by the civil court for a term of two years or more.

RESTITUTION OF PROPERTY.

1953-54, c. 13, s. 15.

183B. (1) Where a person is convicted of an offence under the Code of Service Discipline, the service tribunal shall order that any property obtained by the commission of the offence shall be restored to the person apparently entitled to it, if at the time of the trial the property is before the service tribunal

Restitution of property in case of conviction.

National Defence Act

New.
1953-54,
c. 13, s. 15.

or has been detained, so that it can be immediately restored to that person under the order.

Where no
conviction,
but offence
committed.

(2) Where an accused is tried for an offence but is not convicted, and it appears to the service tribunal that an offence has been committed, the service tribunal may order that any property obtained by the commission of the offence shall be restored to the person apparently entitled to it, if at the time of the trial the property is before the service tribunal or has been detained, so that it can be immediately restored to that person under the order.

Exceptions.

(3) An order shall not be made under this section in respect of

- (a) property to which an innocent purchaser for value has acquired lawful title,
- (b) a valuable security that has been paid or discharged in good faith by a person who was liable to pay or discharge it, or
- (c) a negotiable instrument that has, in good faith, been taken or received by transfer or delivery for valuable consideration by a person who had no notice and no reasonable cause to suspect that an offence had been committed.

Execution of
order for
restitution.

(4) An order made under this section shall be executed by the persons by whom the process of the service tribunal is ordinarily executed.

PART IX.

APPEAL, REVIEW AND PETITION.

GENERAL PROVISIONS.

"legality"
and
"illegal."

184. For the purposes of this Part, the expressions "legality" and "illegal" shall be deemed to relate either to questions of law alone or questions of mixed law and fact. 1950, c. 43, s. 184.

Saving
provision.

185. Nothing in this Part is in derogation of the powers conferred under Part VIII to quash findings or alter findings and sentences. 1950, c. 43, s. 185.

RIGHT TO APPEAL.

Cases in
which
applicable.

186. Every person who has been tried and found guilty by a court martial, subject to subsection (3) of section 188, has a right to appeal in respect of any or all of the following matters:

- (a) the severity of the sentence;
- (b) the legality of any or all of the findings; or
- (c) the legality of the whole or any part of the sentence. 1950, c. 43, s. 186.

Other
rights
preserved.

187. The right of any person to appeal from the finding or sentence of a court martial shall be deemed to be in addition to and not in derogation of any rights that he has under the law of Canada. 1950, c. 43, s. 187.

National Defence Act

ENTRY OF APPEALS.

188. (1) An appeal under this Part shall be stated on a form to be known ^{Form.} as a Statement of Appeal, which shall contain particulars of the grounds upon which the appeal is founded and shall be signed by the appellant.

(2) A Statement of Appeal is not invalid by reason only of informality or ^{Validity.} the fact that it deviates from the prescribed form.

(3) No appeal under this Part shall be entertained unless the Statement ^{Time} of Appeal is delivered to a superior officer or to any person by whom the ap- ^{limits.}pellant is held in custody

(a) within fourteen days after delivery to the offender, pursuant to section 168, of a copy of the minutes of the proceedings and of the form of the Statement of Appeal; or

(b) where the finding or sentence in respect of which the offender intends to enter an appeal has been altered under section 170, 172, 173 or 174, within fourteen days after the date upon which notice of such alteration is given to the offender.

(4) All Statements of Appeal shall be forwarded to the Judge Advo- ^{Where sent.}cate General. 1950, c. 43, s. 188.

PRELIMINARY DISPOSITION OF APPEALS.

189. (1) Where an appeal relates only to the severity of the sentence, ^{When} mentioned in paragraph (a) of section 186, the Judge Advocate General shall ^{quantum of} forward the Statement of Appeal to an authority who, under section 174, has ^{sentence} power to mitigate, commute or remit punishments and that authority may ^{only} dismiss the appeal or, subject to Part VIII, may mitigate, commute or remit ^{involved.} the punishments comprised in the sentence.

National Defence Act

(2) Where an appeal relates to the legality of the findings, as mentioned ^{Illegal findings.} in paragraph (b) of section 186, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board provided for in this Part, unless the appropriate chief of staff, acting on the certificate of the Judge Advocate General that all of the findings in respect of which an appeal has been made are illegal, quashes such findings.

(3) Where an appeal relates to the legality of the sentence, mentioned ^{Illegal sentences} in paragraph (c) of section 186, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board, unless the Judge Advocate General certifies that there is no finding in respect of which any sentence could legally be passed, in which case the sentence shall be null and void. 1950, c. 43, s. 189.

COURT MARTIAL APPEAL BOARD.

190. (1) There shall be a Court Martial Appeal Board, which shall hear and ^{Establishment.} determine all appeals referred to it under this Part.

(2) The Court Martial Appeal Board shall consist of the following mem- ^{Members.} bers:

- (a) a Chairman, who shall be a judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the *Criminal Code*; and
- (b) two or more other persons each of whom shall be a judge or retired judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the *Criminal Code*, or a barrister or advocate of not less than five years standing,

all of whom shall be appointed by the Governor in Council.

(3) The Chairman of the Court Martial Appeal Board shall preside at ^{Presiding member.} sittings of the Board, unless he appoints another member to be the presiding member in his place.

(4) The Minister may require the Court Martial Appeal Board to sit ^{Sittings and hearings.} and hear appeals at any place or places, and the Chairman of the Board shall arrange for sittings and hearings accordingly.

(5) Three members of the Court Martial Appeal Board shall be a quorum, ^{Quorum and decision on appeal.} and the decision on any appeal shall be determined by the vote of the majority of the members present, and in the event of an equality of votes, the Chairman or other presiding member has a second or casting vote.

(6) Where an appeal has been wholly or partially dismissed by the Court ^{Notification of dissent.} Martial Appeal Board, and there has been dissent in the Board, the appellant shall forthwith be informed of that dissent.

(7) The Court Martial Appeal Board may hear evidence, including new ^{Evidence.} evidence, as it may deem expedient, and the Board may sit in camera or in public, and for the performance of its duties has all of the powers vested in commissioners under Part I of the *Inquiries Act*.

(8)

National Defence Act

Fees.

(8) The members of the Court Martial Appeal Board shall be paid such fees and allowances as may be prescribed by the Governor in Council. 1950, c. 43, s. 190.

Exercise of
Chairman's
powers by
other
members.

(9) The Chairman of the Court Martial Appeal Board may authorize any other member of the Board to exercise any of the powers or functions of the Chairman under this section. 1955, c. 28, s. 11.

DISPOSITION OF APPEALS BY COURT MARTIAL APPEAL BOARD.

Powers.

191. (1) Upon the hearing of an appeal respecting the legality of a finding of guilty on any charge, the Court Martial Appeal Board, if it allows the appeal, shall set aside the finding and

(a) direct a finding of not guilty to be recorded in respect of that charge, or

(b) direct a new trial on that charge, in which case the appellant shall be tried again as if no trial on that charge had been held.

1955, c. 28, s. 12.

Effect of
setting
aside
finding
of guilty.

(2) Where the Court Martial Appeal Board has set aside a finding of guilty and no other finding of guilty remains, the whole of the sentence ceases to have force and effect. 1950, c. 43, s. 191.

Punishment
where
finding
set aside.
Rep. and New.
1952-53,
c. 24, s. 5(3).

(3) Where the Court Martial Appeal Board has set aside a finding of guilty but another finding of guilty remains, the Board shall forthwith refer the proceedings to the Minister, or to such other authority as he may prescribe or appoint for that purpose, who shall

(a) affirm the punishment imposed by the court martial if the court martial could legally have imposed that punishment upon the finding of guilty that remains; or

(b) subject to section 175, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate.

Substitution
of finding.
New.
1952-53,
c. 24, s. 5(3).

(4) Where an appellant has been found guilty of an offence and the court martial could on the charge have found him guilty under section 120 of some other offence, or could have found him guilty of some other offence on any alternative charge that was laid, and on the actual finding it appears to the Court Martial Appeal Board that the facts proved him guilty of that other offence, the Board may, instead of allowing or dismissing the appeal, substitute for the finding of guilty made by the court martial a finding of guilty of that other offence, and the Board shall forthwith refer the proceedings to the Minister, or to such other authority as he may prescribe or appoint for that purpose, who shall

(a) affirm the punishment imposed by the court martial if the court martial could legally have imposed that punishment upon the substituted finding of guilty; or

(b) subject to section 175, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate.

New
punishments.
New.
1952-53,
c. 24, s. 5(3).

(5) Where, pursuant to subsection (3) or (4), a new punishment is substituted, the punishment imposed by the court martial thereupon ceases to have effect and section 176 applies to the new punishment or punishments.

National Defence Act

192. Upon the hearing of an appeal respecting the legality of a sentence passed by a court martial, the Court Martial Appeal Board, if it allows the appeal, shall forthwith refer the proceedings to the Minister, or to such other authority as the Minister may prescribe or appoint for that purpose, who shall, subject to section 175, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court martial thereupon ceases to have force and effect; and section 176 applies to the new punishment or punishments. 1950, c. 43, s. 192.

Substitution of new punishment where illegal punishment set aside.

193. Notwithstanding anything in this Part, the Court Martial Appeal Board may disallow an appeal if, in the opinion of the Board, to be expressed in writing, there has been no substantial miscarriage of justice. 1950, c. 43, s. 193.

Special power to disallow appeal.

194. Where a punishment included in a sentence has been dealt with pursuant to subsection (3) of section 191 or section 192, the new punishment shall be subject to mitigation, commutation, remission or suspension in the same manner and to the same extent as if it had been passed by the court martial that tried the appellant. 1950, c. 43, s. 194.

Power of service authorities preserved.

194A. Where it appears to the Judge Advocate General that no substantial grounds of appeal have been shown, or that the appellant has abandoned his appeal, the Judge Advocate General may refer the appeal to the Court Martial Appeal Board for summary determination, and where an appeal is referred to the Board under this section, the Board may, if it considers

Summary disposition of certain appeals. New. 1952-53, c. 24, s. 5(4).

(a) that the appeal has been abandoned, or

(b) that no substantial grounds of appeal have been shown and the appeal can be determined without being adjourned for a full hearing, dismiss the appeal summarily without calling on any person to appear.

RULES OF APPEAL PROCEDURE.

195. (1) The Chairman of the Court Martial Appeal Board, with the approval of the Governor in Council, may make rules not inconsistent with this Act respecting

Chairman may make.

(a) the seniority of members of the Board for the purpose of presiding at appeals;

(b) the practice and procedure to be observed at hearings;

(c) the conduct of appeals;

(d) the production of the minutes of the proceedings of any court martial in respect of which an appeal is taken;

(e) the production of all other documents and records relating to an appeal;

National Defence Act

- (f) the extent to which new evidence may be introduced;
- (g) the circumstances in which the appellant may attend or appear before the Board on the hearing of his appeal, but no such rule shall deprive an appellant of the right to be present on the hearing of his appeal from a sentence of death;
- Am. 1952-53, c. 24, s. 5(5). (h) provision for and payment of fees of counsel for the appellant; and
- New. 1952-53, c. 24, s. 5(5). (i) the circumstances in which an appeal may be considered to be abandoned for want of prosecution, and the summary disposition by the Board of such appeals, and of appeals showing no substantial grounds.
- Publication. (2) No rule made under this section has effect until it has been published in the *Canada Gazette*. 1950, c. 43, s. 195.

APPEAL TO SUPREME COURT OF CANADA.

- Cases in which appeals lie. **196.** (1) A person whose appeal has been wholly or partially dismissed by the Court Martial Appeal Board may, where there has been dissent in the Board, appeal to the Supreme Court of Canada with leave of the Attorney General of Canada.
- Application. (2) An application for leave to appeal under subsection (1) shall be delivered to the Attorney General of Canada within thirty days of notice to the appellant of the decision of the Court Martial Appeal Board.
- Powers of Supreme Court of Canada. (3) The Supreme Court of Canada, in respect of the hearing and determination of an appeal under this section, has the same powers, duties and functions as the Court Martial Appeal Board has under this Act, and sections 191 to 194 apply with such adaptations and modifications as the circumstances may require. 1950, c. 43, s. 196.

REVIEW AFTER EXPIRATION OF RIGHT TO APPEAL.

- Review by Judge Advocate General. **197.** Upon the expiration of the period mentioned in subsection (3) of section 188 within which an appeal may be made, the proceedings of every court martial shall be reviewed by the Judge Advocate General in respect of any matter mentioned in paragraph (b) or (c) of section 186 on which an appeal has not been made. 1950, c. 43, s. 197.
- Procedure where illegality exists. **198.** Where, upon the review mentioned in section 197, the Judge Advocate General certifies that any finding or punishment is illegal, he shall refer the minutes of the proceedings of the court martial to the appropriate chief of staff for such action under this Act as that chief of staff may deem fit. 1950, c. 43, s. 198.

National Defence Act

PETITION FOR NEW TRIAL.

199. (1) Every person who has been tried and found guilty by a court martial ^{Where applicable.} has a right to petition for a new trial on grounds of new evidence discovered subsequent to his trial.

(2) No petition under this section shall be entertained unless it is de- ^{Time limits.} livered to an officer designated for that purpose in regulations

(a) within one year after the date of the pronouncement of the finding, or

(b) within one year after any punishment of incarceration, undergone by the petitioner in consequence of his trial, has been carried out,

whichever is the later.

(3) Every petition under this section shall be forwarded to the Judge Advocate General ^{Disposal.} who shall refer the petition with his recommendation to the appropriate chief of staff who, if he is of the opinion that the petition should be granted, shall order a new trial, in which case the petitioner shall be tried again as if no trial had been held.

(4) (*Repealed*) 1955, c. 28, s. 9.

PART X.

MISCELLANEOUS PROVISIONS HAVING GENERAL APPLICATION.

WITNESSES AND COUNSEL AT COURTS MARTIAL.

200. (1) For the purposes of this section, "court martial", in addition to the tribunals mentioned in paragraph (7) of section 2, includes a commissioner ^{"Court martial." Rep. and New. R.S.C. 1952, c. 310, s. 2(12)} taking evidence under this Act; and references in this section to the president or members of a court martial shall be deemed to include references to any such commissioner.

(2) Every person required to give evidence before a court martial may be summoned under the hand of the authority by whom the court martial was convened, established or appointed, or the Judge Advocate General, or under the hand of the president, judge advocate or commissioner taking evidence under this Act. ^{Summons to witnesses. Rep. and New. R.S.C. 1952, c. 310, s. 2(13)}

(3) A person summoned under subsection (2) may be required to bring with him and produce at a court martial any documents in his possession or under his control relating to the matters in issue before the court martial. ^{Production of documents.}

(4) A witness summoned or attending to give evidence before a court martial shall be paid such witness fees and allowances for expenses of attendance as are prescribed in regulations. ^{Witness fees.}

(5) Any conduct of counsel before a court martial that would be liable to censure or be contempt of court if it took place before a civil court in the place ^{Misconduct of counsel.}

National Defence Act

where the court martial is held is likewise liable to censure or is contempt of court in the case of a court martial; and the regulations governing the procedure of courts martial are binding upon counsel appearing before courts martial, and wilful disobedience of those regulations shall, if persevered in, be deemed to be contempt of court. 1950, c. 43, s. 200.

Removal for
contempt.
Rep. and New.
R.S.C. 1952,
c. 310, s. 2(14)

(6) A court martial, by order under the hand of the president or a commissioner taking evidence under this Act, may cause counsel to be removed from the court martial for contempt.

Oaths.

201. Every person when required to give evidence on oath under this Act shall take his oath in the form prescribed in regulations and that oath, in respect of any prosecution for perjury under the *Criminal Code*, has the same force and effect as an oath taken before a civil court. 1950, c. 43, s. 201.

DISPOSAL BY CIVIL AUTHORITIES OF DESERTERS AND
ABSENTEES WITHOUT LEAVE.

"Justice."

202. (1) For the purposes of this section "justice" means a justice as defined in the *Criminal Code*.

Powers of
arrest on
reasonable
suspicion.

(2) Upon reasonable suspicion that a person is a deserter or absentee without leave, it is lawful for any constable, or if no constable can be immediately met with, for any officer, man or other person, to apprehend that suspected person and forthwith to bring him before a justice.

Issue of
warrant.

(3) A justice, if he is satisfied by evidence on oath that a deserter or absentee without leave is, or is reasonably suspected to be, within his jurisdiction, may issue a warrant authorizing the deserter or absentee without leave to be apprehended and brought forthwith before him or any other justice.

Powers of
justice.

(4) Where a person is brought before a justice charged with being a deserter or absentee without leave under this Act, that justice may examine into the case in like manner as if that person were brought before him accused of an indictable offence.

Disposal
of suspected
person.

(5) A justice, if satisfied either by evidence on oath or by the admission of a person brought before him under this section that he is a deserter or absentee without leave, shall cause him to be delivered into service custody in such manner as the justice may deem most expedient; and, until he can be so delivered, the justice may cause him to be held in civil custody for such time as appears to the justice reasonably necessary for the purpose of delivering him into service custody.

Verification
of admission.

(6) Where a person has admitted that he is a deserter or absentee without leave and evidence of the truth or falsehood of the admission is not then forthcoming, the justice before whom that person is brought shall remand him for the purpose of obtaining information as to the

National Defence Act

truth or falsehood of the admission; and for that purpose the justice shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

(7) A justice, before whom a person is brought under this section, may from time to time remand that person for a period not exceeding eight days on each appearance before him, but the whole period during which a person is so remanded shall not be longer than appears to the justice reasonably necessary for the purpose of obtaining the information mentioned in subsection (6). Remands.

(8) Where a justice before whom a person is brought under this section causes him to be delivered into service custody or to be held in civil custody, the justice shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister. Report following disposal.

(9) Where a person surrenders himself to a constable and admits desertion or absence without leave, the constable in charge of the police station to which he is brought shall forthwith inquire into the case and, if it appears to him from the admission that such person is a deserter or absentee without leave, he may cause him to be delivered into service custody, without bringing him before a justice; and in that event the constable shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister. Report where person delivered into service custody.
1950, c. 43, s. 202.

CERTIFICATE OF CIVIL COURTS.

203. Where any person subject to the Code of Service Discipline has at any time been tried by a civil court, the clerk of that court or other authority having custody of the records of the court shall, if required by any officer of the Canadian Forces, transmit to that officer a certificate setting forth the offence for which that person was tried, together with the judgment or order of the court thereon, and shall be allowed for that certificate the fee authorized by law. 1950, c. 43, s. 203. Procedure.

DUTIES RESPECTING INCARCERATION.

204. (1) Every warden, governor, gaoler, commanding officer, commandant or other keeper of a penitentiary, civil prison, service prison or detention barrack shall take cognizance of any warrant of committal purporting to be signed by a committing authority mentioned in section 178 and shall receive and detain, according to the exigency of that warrant, the offender mentioned therein and delivered into his custody and shall confine that person until discharged or delivered over in due course of law. Execution of warrants.

National Defence Act

Delivery of
Statements
of Appeal.

(2) Any person mentioned in subsection (1) to whom a Statement of Appeal is delivered under section 188 shall cause the Statement of Appeal to be forwarded forthwith to the Judge Advocate General. 1950, c. 43, s. 204.

MANŒUVRES.

Minister
may
authorize.

205. (1) For the purpose of training the Canadian Forces, the Minister may authorize the execution of military exercises or movements, referred to in this section as "manœuvres", over and upon such parts of Canada and during such periods as are specified.

Notice.

(2) Notice of manœuvres shall be given to the inhabitants of any area concerned by appropriate publication.

Powers.

(3) Units and other elements of the Canadian Forces may execute manœuvres on and pass over such areas as are specified under subsection (1), stop or control all traffic thereover whether by water, land or air, draw water from such sources as are available, and do all things reasonably necessary for the execution of the manœuvres.

Inter-
ference.

(4) Any person who wilfully obstructs or interferes with manœuvres authorized under this section and any animal, vehicle, vessel or aircraft under his control may be forcibly removed by any constable or by any officer, or by any man on the order of any officer.

Bar of
action.

(5) No action lies by reason only of the execution of manœuvres authorized under this section. 1950, c. 43, s. 205.

EMERGENCY POWERS IN RELATION TO PROPERTY.

Control
of property
in emer-
gency.

206. (1) When the Governor in Council by reason of an emergency declares it to be expedient for Her Majesty to take control of property, including transportation or communications facilities in Canada or operating from Canada, the Minister may, by warrant under his hand, empower any person named in such warrant to take possession of property which he considers necessary for defence purposes or to assume the operation or management thereof for the service of Her Majesty in such manner as the Minister directs; and all persons employed in whatever manner in connection with such property shall obey the directions of the Minister or of the person named in the warrant.

Duration.

(2) A warrant mentioned in subsection (1) remains in force only so long as the emergency exists.

Enforce-
ment of
contracts.

(3) Where action relating to any property has been taken under subsection (1), all contracts and agreements in respect of that property, that would otherwise have been enforceable by or against the person who owns that property, including the directors, officers, servants and agents of that person, are enforceable by or against Her Majesty. 1950, c. 43, s. 206.

Emergency
powers of
commanding
officer.

207. When an emergency exists, the officer in command of any unit of the Canadian Forces or any officer duly authorized by him may, subject to regulations made by the Governor in Council, enter upon,

National Defence Act

take, impress, control, use, occupy, alter, remove or cause to be removed, destroy, desolate or lay waste any property imperatively required to be so dealt with immediately for the purpose of meeting the emergency. 1950, c. 43, s. 207.

208. Any person who suffers loss, damage or injury by reason of the exercise of any of the powers conferred by section 205, 206 or 207 shall be compensated from the Consolidated Revenue Fund. 1950, c. 43, s. 208. Compensation.

EXEMPTION FROM TOLLS.

209. (1) No duties or tolls, otherwise payable by law in respect of the use of any pier, wharf, quay, landingplace, highway, road, right of way, bridge or canal, shall be paid by or demanded from any unit or other element of the Canadian Forces or an officer or man when on duty or any person under escort or in respect of the movement of any materiel except that the Treasury Board may authorize payment of duties and tolls in respect of such use. Duties or tolls on roads, bridges etc. Rep. and New. 1956, c. 18, s. 13.

(2) Nothing in this section affects the liability for payment of duties or tolls lawfully demandable in respect of any vehicles or vessels other than those belonging to or in the service of Her Majesty. 1950, c. 43, s. 209. Exception.

SHIPS IN CONVOY.

210. Every master or other person in command of a merchant or other vessel under the convoy of any of Her Majesty's Canadian ships shall obey the directions of the commanding officer of the convoy or the directions of the commanding officer of any of Her Majesty's Canadian ships in all matters relating to the navigation or security of the convoy, and shall take such precautions for avoiding the enemy as may be directed by any such commanding officer; and if he fails to obey such directions, that commanding officer may compel obedience by force of arms, without being liable for any loss of life or property that may result from the use of such force. 1950, c. 43, s. 210. Master of merchant ship to obey convoying officer.

SALVAGE.

211. (1) Where salvage services are rendered by or with the aid of a vessel or aircraft belonging to or in the service of Her Majesty and used in the Canadian Forces, Her Majesty may claim salvage for those services, and has the same rights and remedies in respect of those services as any other salvor would have had if the vessel or aircraft had belonged to him. Crown may claim for salvage services.

(2) No claim for salvage services by the commander or crew or part of the crew of a vessel or aircraft belonging to or in the service of Her Majesty and used in the Canadian Forces shall be finally adjudicated upon, unless the consent of the Minister to the prosecution of the claim is proved; and such consent may be given at any time before final adjudication. Consent of Minister to salvage claim.

*National Defence Act*Evidence
of consent.

(3) Any document purporting to give the consent of the Minister for the purpose of this section is evidence of that consent.

Claim
dismissed if
no consent.

(4) Where a claim for salvage services is prosecuted and the consent of the Minister is not proved the claim shall be dismissed with costs.

Minister
may accept
offers of
settlement
for the
Crown and
others.

(5) The Minister may, upon the recommendation of the Attorney General of Canada, accept on behalf of Her Majesty and the commander and crew or part of the crew, offers of settlement made with respect to claims for salvage services rendered by vessels or aircraft belonging to or in the service of Her Majesty and used in the Canadian Forces.

Distribution.

(6) The proceeds of any settlement made under subsection (5) shall be distributed in such manner as the Governor in Council may prescribe.

*Canada
Shipping
Act—
limiting
provision.*

(7) Section 541 of the *Canada Shipping Act* does not apply to or in respect of any claim for salvage services by Her Majesty or by the commander or crew or part of the crew of a vessel or aircraft belonging to or in the service of Her Majesty and used in the Canadian Forces. 1950, c. 43, s. 211.

GOVERNMENT VESSELS DISCIPLINE ACT.

When
applicable.

212. Unless the Governor in Council otherwise directs, the *Government Vessels Discipline Act* does not apply to Her Majesty's Canadian ships or to any other ship or vessel of the Canadian Forces or to the officers, men or other persons serving or engaged for service therein, or to officers and men serving in the regular forces, the active service forces, or the reserve forces when on service or on active service. 1950, c. 43, s. 212.

LIMITATION OF CIVIL LIABILITIES.

Execution
against
officers
and men.

213. No judgment or order given or made against an officer or man by any court in Canada shall be enforced by the levying of execution on any arms, ammunition, equipment, instruments or clothing used by him for military purposes. 1955, c. 28, s. 13.

Exemption
from jury
service.

214. Every officer and man of the reserve forces on active service and every officer and man of the regular forces and active service forces is exempt from serving on a jury. 1950, c. 43, s. 214.

Limitation
of actions.

215. (1) No action, prosecution or other proceeding lies against any person for an act done in pursuance or execution or intended execution of this Act or any regulations, or of any military or departmental duty or authority, or in respect of any alleged neglect or default in the execution of this Act, regulations or such duty or authority, unless it is commenced within six months next after the act, neglect or default complained of, or, in the case of continuance of injury or damage, within six months after the ceasing thereof.

National Defence Act

(2) Nothing in subsection (1) is in bar of proceedings against any person ^{Saving provision.} under the Code of Service Discipline. 1950, c. 43, s. 215.

216. No action or other proceeding lies against any officer or man in respect ^{Actions barred.} of anything done or omitted by him in the execution of his duty under the Code of Service Discipline, unless he acted, or omitted to act, maliciously and without reasonable and probable cause. 1950, c. 43, s. 216.

COMPENSATION.

217. Compensation may be paid to such extent, in such manner and to ^{Compensation to certain public service employees} such persons as the Governor in Council may by regulation prescribe, in respect of disability or death resulting from injury or disease or aggravation thereof incurred by any person while

- (a) employed in the public service of Canada,
- (b) employed under the direction of any part of the public service of Canada, or
- (c) engaged, with or without remuneration, in an advisory, supervisory or consultative capacity in or on behalf of the public service of Canada,

and performing any function in relation to the Canadian Forces, the Defence Research Board or any forces co-operating with the Canadian Forces or the Defence Research Board, if the injury or disease or aggravation thereof arose out of or was directly connected with the performance of such functions, but no compensation shall be paid under this section in respect of any disability or death for which a pension is paid or payable by virtue of any of the provisions of the *Pension Act*. 1951 (2nd Sess.), c.7, s. 25.

DEPENDANTS.

1953-54, c. 13, s. 16.

217A. The dependants, as defined by regulation, of members of the Canadian Forces on service or active service in any place out of Canada who are alleged to have committed an offence under the laws applicable in such place may be arrested by such officers and men as are appointed under section 129 and may be handed over to the appropriate authorities of such place.

JURISDICTION OF CIVIL COURTS.

217B. Where an offence under this Act is committed outside Canada, any civil court in Canada that would have jurisdiction to try the offender for that offence if it had been committed within the territorial jurisdiction of that court may try the offender for that offence. 1955, c. 28, s. 14. ^{Offences committed outside Canada.}

National Defence Act

PART XI.

AID OF THE CIVIL POWER.

Definitions.

218. For the purposes of this Part,

"Attorney-General."

- (a) "Attorney-General" means the Attorney-General of any province of Canada, or the acting Attorney-General of a province, or any minister of a government of a province performing for the time being the duties of a provincial Attorney-General;

"Officer Commanding a Command."

- (b) "Officer Commanding a Command" means an officer commanding a Canadian Army Command if he is present in the command and able to act, or if he is not so present, or is from sickness or other cause unable to act, the officer appointed to administer the command or for the time being performing the duties of the officer commanding the command. 1950, c. 43, s. 217.

Canadian Forces liable to be called out to suppress riot.

219. The Canadian Forces, or any unit or other element thereof, or any officer or man, with materiel, are liable to be called out for service in aid of the civil power, in any case in which a riot or disturbance of the peace requiring such service occurs, or is, in the opinion of an Attorney-General, considered as likely to occur, and that is beyond the powers of the civil authorities to suppress, prevent, or deal with. 1950, c. 43, s. 218.

Exception in case of certain reserves.

220. Nothing in this Part shall be deemed to impose liability to serve in aid of the civil power, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only. 1950, c. 43, s. 219.

Attorney-General of province may requisition Canadian Army.

221. In any case where a riot or disturbance occurs, or is considered as likely to occur, the Attorney-General of the province in which is situated the place where the riot or disturbance occurs, or is considered as likely to occur, on his own motion, or upon receiving notification from a judge of a superior,

National Defence Act

county or district court having jurisdiction in that place that the services of the Canadian Forces are required in aid of the civil power, may by requisition in writing, signed by him and addressed to the Officer Commanding a Command of the command in which that place is situated, require the Canadian Army or such part thereof as the authorities hereinafter mentioned consider necessary to be called out on service in aid of the civil power. 1950, c. 43, s. 220.

National Defence Act

222. (1) Upon receiving a requisition in writing made by an Attorney-General under section 221, the Officer Commanding a Command shall call out such part of the Canadian Army in his command as he considers necessary for the purpose of suppressing or preventing any actual riot or disturbance, or any riot or disturbance that is considered as likely to occur.

Call out
of Canadian
Army in a
command.

(2) Where the Officer Commanding a Command mentioned in subsection (1) considers that the services of parts of the Canadian Army in commands other than his command are necessary or desirable for the purpose of suppressing or preventing the riot or disturbance mentioned in the requisition, he shall notify the Chief of the General Staff of the number of officers and men, and of the materiel therefor, that he requires, as to which the Officer Commanding a Command is the sole judge; and upon being so notified the Chief of the General Staff may call out such parts of the Canadian Army and provide such materiel as in his judgment are available to meet the requirements of the Officer Commanding a Command and shall cause them to be despatched to the Officer Commanding a Command.

Call out
of Canadian
Army in
other
commands.

(3) Where the Officer Commanding a Command mentioned in subsection (1) has called out or caused to be called out any part of the Canadian Army in aid of the civil power, and considers that the services of any part of the Royal Canadian Navy or of the Royal Canadian Air Force are necessary or desirable for the purpose of assisting that part of the Canadian Army so called out, he may address to the Minister, through the Chief of the General Staff, a request stating the nature and extent of the assistance from the Royal Canadian Navy or from the Royal Canadian Air Force which in the circumstances the Officer Commanding a Command requires; and the Chief of the Naval Staff or the Chief of the Air Staff, as the case may be, if the Minister so directs, shall call out such part of the Royal Canadian Navy or of the Royal Canadian Air Force, and materiel therefor, as the Minister considers necessary or desirable for the purpose of meeting the request. 1950, c. 43, s. 221.

Call out
of navy
and air
force.

223. A requisition of an Attorney-General under this Part may be in the following form, or to the like effect, and the form may, subject to section 224, be varied to suit the facts of the case:

Form of
requisition.

Province of

To Wit

Whereas information has been received by me from responsible persons (or a notification has been received by me from a judge of a (superior) (county) (district) court having jurisdiction in)
that a riot or disturbance of the peace beyond the powers of the civil

National Defence Act

authorities to suppress (or to prevent or to deal with) and requiring the aid of the Canadian Forces to that end has occurred and is in progress (or is considered as likely to occur) at ;

And whereas it has been made to appear to my satisfaction that the Canadian Forces are required in aid to the civil power;

Now therefore I, _____, under the Attorney-General of _____, and by virtue of the powers conferred by the *National Defence Act*, do hereby require you to call out the Canadian Army or such part thereof as you consider necessary for the purpose of suppressing (or preventing or dealing with) the riot or disturbance and, if it is deemed necessary or desirable by the appropriate authorities, I do hereby request that such other Services of the Canadian Forces as are under that Act liable to be called out in aid of the civil power be so called out for the purpose of assisting the Canadian Army;

And for and on behalf of the Province of _____, I the said Attorney-General, hereby undertake that all expenses and costs, incurred by Her Majesty by reason of the Canadian Forces or any part thereof being called out on service in aid of the civil power pursuant to this requisition, shall be paid to Her Majesty by the said Province.

Dated at _____, this _____ day of _____, 19_____

 Attorney-General.

1950, c. 43, s. 222.

What
requisition
must show.

224. (1) In a requisition made under this Part it shall be stated that information has been received by the Attorney-General from responsible persons, or that a notification has been received by the Attorney-General from a judge that a riot or disturbance beyond the powers of the civil authorities to suppress or to prevent or to deal with, as the case may be, has occurred, or is considered as likely to occur, and that the Canadian Forces are required in aid of the civil power; and the requisition shall further state that it has been made to appear to the satisfaction of the Attorney-General that the Canadian Forces are so required.

Undertaking
of fact to be
binding on
the province.

(2) In a requisition made under this Part there shall be embodied an unconditional undertaking by the Attorney-General that the province shall pay to Her Majesty all expenses and costs incurred by Her Majesty by reason of the Canadian Forces or any part thereof being called out for service in aid of the civil power, as by the requisition required.

Statements
of fact to be
binding on
the province.

(3) Every statement of fact contained in a requisition made under this Part is conclusive and binding upon the province on behalf of which

National Defence Act

the requisition is made, and every undertaking or promise in the requisition is binding upon the province and not open to question or dispute by reason of alleged incompetence or lack of authority on the part of the Attorney-General or for any other reason.

(4) In every case where a requisition is made under this Part, the Attorney-General of the province concerned shall, within seven days after the making of the requisition, cause an inquiry to be made into the circumstances which occasioned the calling out of the Canadian Forces or any part thereof, and shall send a report upon the circumstances to the Secretary of State.

Inquiry and report by Attorney-General.

(5) A statement of fact contained in a requisition made under this Part if not open to dispute by the Officer Commanding a Command upon whom the requisition is made. 1950, c. 43, s. 223.

Statements not open to dispute.

225. Officers and men when called out for service in aid of the civil power shall, without further authority or appointment and without taking oath of office, be held to have and may exercise, in addition to their powers and duties as officers and men, all of the powers and duties of constables, so long as they remain so called out, but they shall act only as a military body, and are individually liable to obey the orders of their superior officers. 1950, c. 43, s. 224.

Officers and men have powers of constables.

226. The Canadian Forces or any part thereof called out in aid of the civil power shall remain on duty in such strength as the Officer Commanding a Command, who has carried into effect a requisition of an Attorney-General made under this Part, deems necessary or orders, until notification is received from the Attorney-General that the Canadian Forces are no longer required in aid of the civil power; and the Officer Commanding a Command may, from time to time as in his opinion the exigencies of the situation require, increase or diminish the number of officers and men called out; except that officers and men of the Royal Canadian Navy and the Royal Canadian Air Force called out to assist the Canadian Army in aid of the civil power may be withdrawn at such time and to such extent as the Chief of the Naval Staff or the Chief of the Air Staff, as the case may be, under the direction of the Minister, may order. 1950, c. 43, s. 225.

Duration of aid of civil power.

227. All expenses and costs incurred by Her Majesty by reason of any of the Canadian Forces being called out under this Part in aid of the civil power, shall be paid to Her Majesty by the province the Attorney-General of which made the requisition requiring the Canadian Army to be called out. 1950, c. 43, s. 226.

Province to pay expenses.

228. Such moneys as are required to meet the expenses and costs occasioned by the calling out of the Canadian Forces as provided for in this Part and for the services rendered by them shall, pending payment by the province liable under section 227, be advanced in the first instance out of the Consolidated Revenue Fund by the authority of the Governor in Council, but are payable by and recoverable from the

Advances in first instance.

National Defence Act

province to and by Her Majesty as moneys paid by Her Majesty to and for the use of the province at the request of the province. 1950, c. 43, s. 227.

PART XII.

OFFENCES TRIABLE BY CIVIL COURTS.

APPLICATION.

Liability
to civil
trial.

229. (1) Every person, including an officer or man, is liable to be tried in a civil court in respect of any offence prescribed in this Part.

Special
provision.

(2) No charge against an officer or man in respect of any offence prescribed in this Part shall, if the complainant is any other officer or man, be tried by a civil court unless the consent thereto in writing of the commanding officer of such first-mentioned officer or man has first been obtained. 1950, c. 43, s. 228.

Special
limitation on
prosecutions.

230. No prosecution in a civil court shall be commenced against a person in respect of an offence prescribed in this Part after the expiration of six months from the date of commission of the offence charged, except for any of the offences mentioned in section 240. 1950, c. 43, s. 229.

OFFENCES.

Breach of
regulations
respecting
defence
establish-
ments, etc.

231. Every person who contravenes regulations respecting the access to, exclusion from, and safety and conduct of any persons in, on or about any defence establishment, work for defence or materiel is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment. 1950, c. 43, s. 230.

False
answer on
enrolment.

232. Every person who knowingly makes a false answer to any question relating to his enrolment that has been put to him by or by direction of the person before whom he appears for the purpose of being enrolled in the Canadian Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment. 1950, c. 43, s. 231.

False
medical
certificates.

233. Every medical practitioner who signs a false medical certificate or other document in respect of

- (a) the examination of a person for the purpose of enrolment in the Canadian Forces;
- (b) the service or release of an officer or man; or
- (c) the disability or alleged disability of a person, purported to have arisen or to have been contracted during, in the course of, or as a result of the service of such person as an officer or man,

National Defence Act

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment. 1950, s. 43, s. 232.

234. Every person who falsely personates any other person in respect of any duty, act or thing required to be performed or done under this Act by the person so personated is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment. 1950, c. 43, s. 233. Personation.

235. Every person who falsely represents himself to any military or civil authority to be a deserter from Her Majesty's Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment. 1950, c. 43, s. 234. Representation of desertion.

236. (1) Every officer or man of the reserve forces who without lawful excuse neglects or refuses to attend any parade, drill or training at the place and hour appointed therefor is guilty of an offence and is liable on summary conviction for each offence, if an officer to a fine of ten dollars, and if a man to a fine of five dollars. Failure to attend parade.

(2) Absence from any parade, drill or training mentioned in subsection (1) is, in respect of each day on which such absence occurs, a separate offence. 1950, c. 43, s. 235. Each absence an offence.

237. Every officer or man of the reserve forces who fails to keep in proper order any personal equipment or who appears at drill, parade or on any other occasion with his personal equipment out of proper order, unserviceable or deficient in any respect is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five dollars for each offence. 1950, c. 43, s. 236. Neglecting personal equipment.

238. Every person who without reasonable excuse interrupts or hinders the Canadian Forces at drill, training or while on the march is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars for each offence; and may be taken into custody and detained by any person by the order of an officer until such drill, training or march is over for the day. 1950, c. 43, s. 237. Interruption of drill or training.

239. Every person who without reasonable excuse obstructs or interferes with manoeuvres authorized under section 205 is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars. 1950, c. 43, s. 238. Hampering manoeuvres.

240. (1) Every person who .

(a) unlawfully disposes of or removes any property;

(b) when lawfully required, refuses to deliver up any property that is in his possession; or

(c) except for lawful cause, the proof of which lies on him has in his possession any property,

Unlawfully dealing with property.

National Defence Act

is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars for each offence.

"Property" defined.

(2) For the purposes of this section, "property" means any public property under the control of the Minister, non-public property, and property of any of Her Majesty's Forces or of any forces co-operating therewith. 1950, c. 43, s. 239.

Assisting or harbouring deserters or absentees.

241. (1) Every person who

- (a) procures, persuades, aids, assists or counsels an officer or man to desert or absent himself without leave; or
- (b) in an emergency, aids, assists, harbours or conceals an officer or man who is a deserter or an absentee without leave and who does not satisfy the court that he did not know that such officer or man was a deserter or an absentee without leave,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars and not less than one hundred dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

Certificate of Judge Advocate General.

(2) A certificate signed by the Judge Advocate General, or such person as he may appoint for that purpose, that an officer or man was convicted under this Act, of desertion or absence without leave or had been continuously absent without leave for six months or more, and setting forth the date of commencement and the duration of such desertion, absence without leave or continuous absence without leave, is for the purposes of proceedings under this section evidence that the officer or man was a deserter or absentee without leave during the period mentioned in the certificate. 1950, c. 43, s. 240.

Aid to intending deserters or absentees.

242. Every person who, knowing that an officer or man is about to desert or absent himself without leave, aids or assists him in his attempt to desert or absent himself without leave is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment. 1950, c. 43, s. 241.

Miscellaneous offences.

243. Every person who

- (a) wilfully obstructs, impedes or otherwise interferes with any other person in the execution of any duty that such other person is required under this Act or regulation to perform;
- (b) counsels any other person not to perform any duty that such other person is required under this Act or regulations to perform;
- (c) does an act to the detriment of any other person in consequence of such other person having performed a duty that he is required under this Act or regulations to perform;
- (d) interferes with or impedes, directly or indirectly, the recruiting of the Canadian Forces;
- (e) wilfully produces any disease or infirmity in, or maims or injures himself or any other person with a view to enabling himself or such other person to avoid service in the Canadian Forces;

National Defence Act

- (f) with intent to enable any other person to render himself, or to induce the belief that such other person is, permanently or temporarily unfit for service in the Canadian Forces, supplies to or for such other person any drug or preparation calculated or likely to render such other person, or lead to the belief that such other person is, permanently or temporarily unfit for such service; or

- (g) gives or receives, or is in any way concerned in the giving or receiving, of any valuable consideration in respect of enrolment, release or promotion in the Canadian Forces,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment. 1950, c. 43, s. 242.

244. (1) Every person who

- (a) on being duly summoned as a witness under section 200 and after payment or tender of the fees and expenses of his attendance prescribed in regulations, makes default in attending;

- (b) being in attendance as a witness before a court martial mentioned in section 200,

- (i) refuses to take an oath or affirmation legally required of him,

- (ii) refuses to produce any document in his power or under his control legally required to be produced by him, or

- (iii) refuses to answer any question that legally requires an answer;

- (c) uses insulting or threatening language before a court martial mentioned in section 200, or causes any interference or disturbance in its proceedings, or prints observations or uses words likely to influence improperly the members of or witnesses before that court martial or to bring that court martial into disrepute, or in any other manner whatsoever displays contempt of that court martial; or

- (d) being in attendance as counsel before a court martial mentioned in section 200, is in contempt of court within the meaning of subsection (5) of that section,

is guilty of an offence and the court martial may, by a certificate setting forth the facts thereof, refer the offence of such person to a civil court, in the place where the court martial is held, that has power to punish witnesses guilty of like offences in that civil court.

(2) Any civil court to which an offence mentioned in this section has been referred shall cause to be brought before it the person certified to have committed that offence, and shall inquire into the circumstances set forth in the certificate mentioned in subsection (1), and, after examination of any witnesses who may be produced for or against the person so accused and after hearing any statement that may be offered in defence, shall, if it seems just, punish the person in like manner as if he had committed the offence in a proceeding in that civil court. 1950, c. 43, s. 243.

Offence of
contempt
of court.

Disposal of
offender.

National Defence Act

Failure to obey directions respecting property taken over, etc.

245. Every person employed in connection with any property, control of which has been taken by Her Majesty under section 206, who does not obey the directions of the Minister or such person as is named in any warrant issued by the Minister is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment. 1950, c. 43, s. 244.

Breach of regulations respecting billeting, etc.

246. Every person who contravenes regulations respecting the quartering, billeting and encamping of a unit or other element of the Canadian Forces, or of an officer or man is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars. 1950, c. 43, s. 245.

Improper exaction of tolls.

247. Every person who receives or demands a duty or toll in contravention of section 209 is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment. 1950, c. 43, s. 246.

Failure to comply with convoy orders.

248. Every person who fails to comply with directions given under section 210 is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment. 1950, c. 43, s. 247.

APPENDIX XII

THE VISITING FORCES (BRITISH COMMONWEALTH) ACT, 1933

(23-24 GEORGE V. CHAPTER 21)

*(As amended by the Canadian Forces Act, 1951,
Chapter 7 (second session))*

An Act to make provision with respect to Forces of Her Majesty from other parts of the British Commonwealth or from a colony when visiting the Dominion of Canada; and with respect to the exercise of command and discipline when Forces of Her Majesty from different parts of the Commonwealth are serving together; and with respect to the attachment of members of one such force to another such force, and with respect to deserters from such forces.

[Assented to 12th April, 1933.]

HIS Majesty, by and with advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Visiting Forces (British Commonwealth) Act, 1933.* Short title.

2. (1) In this Act:—

Definitions.

- (a) "The Commonwealth" means the British Commonwealth of Nations; "The Commonwealth."
- (b) "Colony" includes Aden and any territory which is under Her Majesty's protection; "Colony."
- (c) "Court" includes a service Court of Inquiry, and any officer of a visiting force who is empowered by the law of that part of the Commonwealth to which the force belongs to review the proceedings of a service court, or to investigate charges, or himself to dispose of charges, and the expression "sentence" shall be construed accordingly; "Court." "Sentence."
- (d) "Home forces" mean the naval, army and air forces of Her Majesty raised in Canada; and "Home forces."
- (e) "home force" includes any body, contingent, or detachment of any of the home forces, wherever serving; "home force."
- (f) "Internal administration" in relation to any visiting force includes the administration of the property of a deceased member of the force; and "Internal administration."
- (g) "Member" in relation to a visiting force includes any person who is by the law of that part of the Commonwealth to which the force belongs subject to the naval, army or air force law thereof, and who, being a member of another force, is attached to the visiting force, or being a civilian employed in connection with the visiting force, entered into his engagement outside of Canada; "Member."
- (h) "Visiting force" means any body, contingent or detachment of the naval, army and air forces of Her Majesty "Visiting force."

Chap. 21.

Visiting Forces Act

23-24 GEO. V.

raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand or the Union of South Africa, which is, with the consent of Her Majesty's Government in Canada, lawfully present in Canada;

"Forces."

(i) "Forces" includes reserve and auxiliary forces.

Order in Council.

(2) An Order in Council under this Act may be revoked or varied by a subsequent Order in Council.

Discipline and internal administration of visiting forces.

***3.** (1) When a visiting force is present in Canada it shall be lawful for the naval, army and air force courts and authorities (in this Act, referred to as the "service courts" and "service authorities") of that part of the Commonwealth to which the Force belongs, to exercise within Canada in relation to members of such Force in matters concerning discipline and in matters concerning the internal administration of such Force all such powers as are conferred upon them by the law of that part of the Commonwealth.

Privileges and immunities of service Court.

(2) The members of any such service court as aforesaid exercising jurisdiction by virtue of this Act, and witnesses appearing before any such court, shall enjoy the like immunities and privileges as are enjoyed by a service court exercising jurisdiction by virtue of the laws of Canada and by witnesses appearing before such a court.

Legality of sentence, constitution of court, and proceedings.

(3) Where any sentence has, whether within or without Canada, been passed upon a member of a visiting force by a service court of that part of the Commonwealth to which the force belongs, then for the purposes of any legal proceedings within Canada the court shall be deemed to have been properly constituted, and its proceedings shall be deemed to have been regularly conducted, and the sentence shall be deemed to be within the jurisdiction of the court and in accordance with the law of that part of the Commonwealth, and if executed according to the tenor thereof shall be deemed to have been lawfully executed, and any member of a visiting force who is detained in custody in pursuance of any such sentence, or pending the determination by such a service court as aforesaid of a charge brought

*(A) Pursuant to Order in Council PC 1955-850, 8 Jun 55, a proclamation was issued:

- (a) declaring section 3 of the *Visiting Forces (British Commonwealth) Act, 1933*, inapplicable to the United Kingdom of Great Britain and Northern Ireland; and
- (b) declaring Part II of the *Visiting Forces (North Atlantic Treaty) Act* applicable to the United Kingdom of Great Britain and Northern Ireland.
- (B) The disciplinary jurisdiction of service tribunals of visiting forces of the United Kingdom present in Canada is governed by Part II of the *Visiting Forces (North Atlantic Treaty) Act* (Appendix XIII).
- (C) *The Visiting Forces (British Commonwealth) Act, 1933*, continues to apply in full to visiting forces in Canada from the Commonwealth of Australia, the Dominion of New Zealand and the Union of South Africa.

1932-33.

Visiting Forces Act.

Chap. 21.

3

against him, shall for the purposes of any such proceedings as aforesaid be deemed to be in lawful custody.

For the purposes of any such proceedings as aforesaid a certificate under the hand of the officer commanding a visiting force that a member of that force is being detained for either of the causes aforesaid shall be conclusive evidence of the cause of his detention, but not of his being such a member, and a certificate under the hand of such an officer that the persons specified in the certificate sat as a service court of that part of the Commonwealth to which the force belongs shall be conclusive evidence of that fact.

Certificates
as evidence.

(4) No proceedings in respect of the pay, terms of service or discharge of a member of a visiting force shall be entertained by any court of Canada.

Proceedings
not to be
questioned.

(5) For the purpose of enabling such service courts and such service authorities as aforesaid to exercise more effectively the powers conferred upon them by this section, the Minister of National Defence, if so requested by the officer commanding a visiting force or by the Government of that part of the Commonwealth to which the force belongs, may from time to time by general or special orders to any home force direct the members thereof to arrest members of the visiting force alleged to have been guilty of offences against the law of that part of the Commonwealth and to hand over any person so arrested to the appropriate authorities of the visiting force

Power of
Minister
to order
arrest, if so
requested.

4. (1) The Governor in Council may authorize any Government Department, Minister of the Crown, or other person in Canada, to perform, at the request of such authority or officer as may be specified in the order, but subject to such limitations as may be so specified, any function in relation to a visiting force and members thereof which that Department, Minister or person performs or could perform in relation to a home force of like nature to the visiting force, or in relation to members of such a force and, for the purpose of the exercise of any such function, any power exercisable by virtue of any enactment by the Minister, Department or person in relation to a home force or members thereof shall be exercisable by him or them in relation to the visiting forces and members thereof:

Powers
as to home
forces may
upon request
be exercised
as to visiting
force.

Provided that nothing in this subsection shall authorize any interference in matters relating to discipline or to the internal administration of the force.

Proviso.

(2) If the Governor in Council so provides, members of a visiting force if sentenced by a service court of that part of the Commonwealth to which the force belongs to penal servitude, imprisonment or detention may, under the authority of the Minister of National Defence, given at the request of the officer commanding the visiting force, be temporarily detained in custody in prisons or detention

Temporary
detention.

Imprison-
ment.

Orders as
to treatment,
release, etc.

Costs.

Provisions
applicable
to visiting
force same
as apply to
a home force
of a like
nature.

R.S., c. 132.
R.S., c. 139.

Proviso.

Application
of order
in council.

barracks in Canada, and if so sentenced to imprisonment may, under the like authority, be imprisoned during the whole or any part of the term of their sentences in prisons in Canada, and the Governor in Council may by the same or a subsequent order make provision with respect to any of the following matters, that is to say, the reception of such persons from, and their return to, the service authorities concerned, their treatment while in such custody, or while so imprisoned, the circumstances under which they are to be released, and the manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody, or while so imprisoned.

Any costs incurred in the maintenance and return of, or otherwise in connection with, any person dealt with in accordance with the provisions of this subsection shall be defrayed in such manner as may, with the consent of the Minister of Finance, be agreed between the Minister of National Defence and the Government of that part of the Commonwealth which is concerned

(3) Subject as hereinafter provided, any enactment (whether contained in the *Militia Act*, the *Naval Service Act*, or any other statute) which—

(a) exempts, or provides for the exemption of, any vessel, vehicle, aircraft, machine or apparatus of, or employed for the purposes of the home forces or any of them from the operation of any enactment; or

(b) in virtue of a connection with the home forces or any of them, confers a privilege or immunity on any persons; or

(c) in virtue of such a connection, excepts any property, trade or business, in whole or in part, from the operation of any enactment, or from any tax, rate, imposition, toll or charge; or

(d) imposes upon any person or undertaking obligations in relation to the home forces, or any of them, or any member or service court thereof; or

(e) penalises misconduct by any person in relation to the home forces or any of them, or any member or service court thereof,

shall, with any necessary modifications apply in relation to a visiting force as it would apply in relation to a home force of a like nature to the visiting force;

Provided that the Governor in Council may direct that any such enactment either shall not apply, or shall apply with such exceptions and subject to such adaptations or modifications as may be specified.

(4) An order in council under this section may apply either generally, or in relation to visiting forces from any particular part of the Commonwealth, or in relation to any particular visiting force, or in relation to any particular place.

1932-33

Visiting Forces Act.

Chap. 21.

5

5. (1) The forces to which this section applies are such of the naval, army and air forces of Her Majesty raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand or the Union of South Africa, as the Governor in Council may direct. ^{Application of section.}

(2) Subject to this section, subsections one to five, inclusive, of section two hundred and two of *The National Defence Act* apply in relation to a deserter or absentee without leave from any force to which this section applies (including any member of a reserve or auxiliary force who, having failed to obey a notice calling upon him to appear at any place for service, is by the law of that part of the Commonwealth to which the force belongs liable to the same punishment as a deserter, or to the same punishment as an absentee without leave), as they apply in relation to a deserter or absentee without leave from a home force. (Canadian Forces Act. 1951. Chap. 7.) ^{Deserters and absentees.}

Provided that any reference in the said paragraphs to military custody shall be construed as including a reference to naval or air force custody. ^{Proviso.}

(3) No person who is alleged to be a deserter from any such force as aforesaid shall be apprehended or dealt with under this section except in compliance with a specific request from the Government of that part of the Commonwealth to which the force belongs, and a person so dealt with shall be handed over to the authorities of that part of the Commonwealth at such place on the coast or frontier of Canada as may be agreed: ^{Apprehension on request.}

Provided that a person who is alleged to be a deserter or absentee without leave from a visiting force may also be apprehended and dealt with under this section in compliance with a request, whether specific or general, from the officer commanding that force, and shall, if that force is still present in Canada, be handed over to the officer commanding that force at the place where the force is stationed. ^{Proviso.}

(4) For the purposes of any proceedings under this section:—

(i) a document purporting to be a certificate under the hand of the Secretary of State for External Affairs or the Minister of National Defence, that a request has been made under subsection (3) of this section, shall be admissible without proof as evidence of such a request; ^{Certificate of Minister evidence of request.}

(ii) a document purporting to be a certificate under the hand of the officer commanding a unit or detachment of any force to which this section applies that a named and described person was at the date of the certificate a deserter, or absentee without leave, from that force shall be admissible without proof as evidence of the facts so certified. ^{Certificate of commanding officer evidence of desertion.}

6. (1) The forces, other than home forces, to which this section applies are the naval, army and air forces of Her Majesty ^{Application of section.}

6

Chap. 21.

Visiting Forces Act.

23-24 GEO. V.

raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand or the Union of South Africa.

Temporary
attachments
to a home
force.

(2) The Governor in Council,

(i) may attach temporarily to a home force any member of another force to which this section applies who is placed at his disposal for the purpose by the service authorities of that part of the Commonwealth to which the other force belongs;

To force of
another part
of Common-
wealth.

(ii) subject to anything to the contrary in the conditions applicable to his service, may place any member of a home force at the disposal of the service authorities of another part of the Commonwealth for the purpose of being attached temporarily by those authorities to a force to which this section applies belonging to that part of the Commonwealth.

Law applic-
able to
member of
force attach-
ed to home
force.

(3) Whilst a member of another force is by virtue of this section attached temporarily to a home force, he shall be subject to the law relating to the Royal Canadian Navy, Canadian Army, or The Royal Canadian Air Force, as the case may be, in like manner as if he were a member of the home force, and shall be treated and have the like powers of command and punishment over members of the home force to which he is attached as if he were a member of that force of relative rank:

Proviso.

Provided that the Governor in Council may direct that in relation to members of a force of any part of the Commonwealth specified the statutes relating to the home forces shall apply with such exceptions and subject to such adaptations and modifications as may be so specified.

Mutual
power of
command
when forces
serving
together or
in combina-
tion.

(4) When a home force and another force to which this section applies are serving together, whether alone or not:—

(a) any member of the other force shall be treated and shall have over members of the home force the like powers of command as if he were a member of the home force of relative rank: and

(b) if the forces are acting in combination, any officer of the other force appointed by Her Majesty, or in accordance with regulations made by or by authority of Her Majesty, to command the combined force, or any part

1932-33.

Visiting Forces Act.

Chap. 21.

7

part thereof, shall be treated and shall have over members of the home force the like powers of command and punishment, and may be invested with the like authority to convene, and confirm the findings and sentences of, courts martial as if he were an officer of the home force of relative rank and holding the same command.

(5) For the purposes of this section, forces shall be deemed to be serving together or acting in combination if and only if they are declared to be so serving or so acting by order of the Governor in Council, and the relative rank of members of the home forces and of other forces shall be such as may be prescribed by regulations made by His Majesty.

Forces
serving
together
or in com-
bination.

7. This Act shall, subject to such exceptions, adaptations and modifications as the Governor in Council may direct, apply—

Application
of Act to
mandated
territories,
colonies,
and other
territories.

(a) in relation to any forces and to the officers and members of such forces raised in any territory in respect to which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom;

(b) in relation to any forces and to the officers and members of such forces raised in any territory in respect to which such a mandate is being exercised by His Majesty's Government in a Dominion;

(c) in relation to any forces and to the officers and members of such forces raised in a colony;

(d) in relation to any forces and to the officers and members of such forces raised in any territory which is being administered by His Majesty's Government in the United Kingdom or by His Majesty's Government in a Dominion.

8. So far as regards any naval force and the members of any such force, the provisions of this Act shall be deemed to be in addition to and not in derogation of such of the provisions of any Act of the Parliament of the United Kingdom or of the Parliament of any other part of the Commonwealth as are for the time being applicable to that force and the members thereof.

Saving for
other en-
actments.

APPENDIX XIII

THE VISITING FORCES (NORTH ATLANTIC TREATY) ACT

*Chapter 284 of the
Revised Statutes of Canada, 1952
As amended by
1953-54, c. 13*

An Act to implement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed on the 19th day of June, 1951.

SHORT TITLE.

1. This Act may be cited as the *Visiting Forces (North Atlantic Treaty)* ^{Short title.}
Act. 1951 (2nd Sess.), c. 28, s. 1.

INTERPRETATION.

2. In this Act

Definitions.

- (a) "Agreement" means the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, set out in the Schedule; ^{"Agreement."}
- (b) "associated state" means a state, other than Canada, ^{"associated state."}
 - (i) that is a party to the Agreement, or
 - (ii) that is designated as an associated state under section 5;
- (c) "Canadian Forces" means the naval, army or air forces of Her Majesty raised by Canada; ^{"Canadian Forces."}
- (d) "civil court" means a court of ordinary criminal jurisdiction in Canada and includes a court of summary jurisdiction; ^{"civil court."}
- (e) "civil prison" means any prison, gaol or other place in Canada in which offenders sentenced by a civil court in Canada to imprisonment for less than two years can be confined; ^{"civil prison."}
- (f) "detention barrack" means a place designated as such under the *National Defence Act*; ^{"detention barrack."}
- (g) "penitentiary" means a penitentiary within the meaning of the *Penitentiary Act*, and includes any prison or place in which a person sentenced to imprisonment for two years or more by a civil court having jurisdiction in the place where the sentence is imposed can, for the time being, be confined; ^{"penitentiary."}
- (h) "regulations" means regulations made by the Governor in Council under this Act; ^{"regulations."}
- (i) "service court" means a naval, army or air force court martial and includes the service authorities of an associated state who are empowered by the laws of that state to deal with charges; ^{"service court."}
- (j) "service prison" means a place designated as such under the *National Defence Act*; ^{"service prison."}

(k)

Visiting Forces (N.A.T.)

"visiting
force."

- (k) "visiting force" means any naval, army or air forces of an associated state present in Canada in connection with official duties; and in the case of an associated state that is a party to the Agreement, includes civilian personnel accompanying such forces who are in the employ of any such forces, and who are not stateless persons, nor nationals of any state that is not a party to the Agreement, nor nationals of, nor ordinarily resident in, Canada; and in the case of any other associated state includes civilian personnel designated by the Governor in Council under section 5 as a civilian component of a visiting force. 1951 (2nd Sess.), c. 28, s. 2.

PART I.

APPROVAL OF AGREEMENT AND APPLICATION OF ACT.

Agreement
approved.

3. The Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, set out in the Schedule, is approved. 1951 (2nd Sess.), c. 28, s. 3.

Application
of Act.

4. This Act applies in respect of an associated state only when the Governor in Council has pursuant to section 5 declared it to be applicable in respect of that state, and it applies in respect of that state only to the extent declared by the Governor in Council pursuant to that section. 1951 (2nd Sess.), c. 28, s. 4.

Proclama-
tions.

*5. The Governor in Council may by proclamation

- (a) designate any country as an associated state for the purposes of this Act;
- (b) declare the extent to which this Act is applicable in respect of any associated state;
- (c) declare any of the provisions of the *Visiting Forces (British Commonwealth) Act*, the *Visiting Forces (United States of America) Act* or *The American Bases Act*, 1941, being No. 12 of the Acts of Newfoundland, 1941, to be inapplicable in respect of any associated state;
- (d) designate civilian personnel as a civilian component of a visiting force belonging to an associated state that is not a party to the Agreement; and
- (e) revoke or amend any designation or declaration made under paragraph (a), (b), (c) or (d). 1951 (2nd Sess.), c. 28, s. 5.

PART II.

DISCIPLINARY JURISDICTION OF VISITING FORCES.

Primary
right of
civil courts
to exercise
jurisdiction

6. (1) Except in respect of offences mentioned in subsection (2) of section 7, the civil courts have the primary right to exercise jurisdiction in respect of any

*Pursuant to Orders in Council made under section 5 of the *Visiting Forces (North Atlantic Treaty) Act*, proclamations have been issued:

- (a) designating as associated states the Kingdom of Belgium, the Kingdom of Denmark, France, the Kingdom of Greece, Iceland, Italy, the Grand Duchy of Luxemburg, the Kingdom of the Netherlands, the Kingdom of Norway, Portugal, the Republic of Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States of America; and
- (b) declaring the whole of the *Visiting Forces (North Atlantic Treaty) Act* applicable to those associated states.

Visiting Forces (N.A.T.)

any act or omission constituting an offence against any law in force in Canada alleged to have been committed by a member of a visiting force.

(2) Where a member of a visiting force has been tried by a service court of that visiting force and has been convicted or acquitted, he may not be tried again by a civil court for the same offence. 1951 (2nd Sess.), c. 28, s. 6.

Previous trial by service courts.

7. (1) Subject to the provisions of this Part, the service authorities and service courts of a visiting force may exercise within Canada in relation to members of that force all the criminal and disciplinary jurisdiction that is conferred upon them by the law of the associated state to which they belong.

Jurisdiction of service courts.

(2) With respect to the alleged commission by a member of a visiting force of an offence respecting

When service courts have primary right to exercise jurisdiction.

- (a) the property or security of the associated state;
 - (b) the person or property of another member of the visiting force;
 - (c) the person or property of a dependant of another member of the visiting force; or
 - (d) an act done or anything omitted in the performance of official duty,
- the service courts of the visiting force have the primary right to exercise jurisdiction.

(3) Where a member of a visiting force has been tried by a civil court and has been convicted or acquitted, he may not be tried again within Canada for the same offence by a service court of that visiting force, but nothing in this subsection prevents that service court from trying within Canada a member of the visiting force for any violation of rules of discipline arising from an act or omission that constituted an offence for which he was tried by a civil court. 1951 (2nd Sess.), c. 28, s. 7.

Previous trial by civil courts.

8. (1) Where under sections 6 and 7 a civil court or a service court of a visiting force has the primary right to exercise jurisdiction, the court having such primary right has the right to deal with charges against alleged offenders in the first instance, but such right may be waived in accordance with regulations.

Trial by court having primary right.

(2) A certificate of the service authorities of an associated state stating that anything alleged to have been done or omitted by a member of a visiting force of that state was or was not done or omitted in the performance of official duty, is receivable in evidence in any civil court and for the purposes of this Part is *prima facie* evidence of that fact. 1951 (2nd Sess.), c. 28, s. 8.

Certificate.

9. The members of a service court of a visiting force, exercising jurisdiction by virtue of this Act, and witnesses appearing before such a service court, have the like immunities and privileges as a service tribunal exercising jurisdiction under the *National Defence Act* and witnesses appearing before any such service tribunal. 1951 (2nd Sess.), c. 28, s. 9.

Witnesses.

10. (1) Where any sentence has been passed by a service court within

Sentences

Visiting Forces (N.A.T)

or without Canada upon a member of the navy, army or air force of an associated state, for the purposes of any legal proceedings within Canada

- (a) the service court shall be deemed to have been properly constituted;
- (b) its proceedings shall be deemed to have been regularly conducted;
- (c) the sentence shall be deemed to have been within the jurisdiction of the service court and in accordance with the law of the associated state; and
- (d) if the sentence has been executed according to the tenor thereof, it shall be deemed to have been lawfully executed.

Detention.

- (2) Any member of a visiting force who is detained in custody
 - (a) in pursuance of a sentence mentioned in subsection (1); or
 - (b) pending the determination by a service court of a charge brought against him,

shall, for the purposes of any legal proceedings within Canada, be deemed to be in lawful custody.

Certificate.

(3) For the purposes of any legal proceedings within Canada, a certificate under the hand of the officer in command of a visiting force stating that the persons specified in the certificate sat as a service court, is receivable in evidence and is conclusive evidence of that fact, and a certificate under the hand of such an officer stating that a member of that force is being detained in either of the circumstances described in subsection (2), is receivable in evidence and is conclusive evidence of the cause of his detention, but not of his being a member of the visiting force. 1951 (2nd Sess.), c. 28, s. 10.

Arrest.

11. For the purpose of enabling the service authorities and service courts of a visiting force to exercise more effectively the powers conferred upon them by this Act, the Minister of National Defence, if so requested by the officer in command of the visiting force or by the associated state, may from time to time by general or special orders to the Canadian Forces, or any part thereof, direct the officers and men thereof to arrest members of the visiting force alleged to have been guilty of offences against the law of the associated state and to hand over any person so arrested to the appropriate authorities of the visiting force. 1951 (2nd Sess.), c. 28 s. 11.

Place of incarceration.

12. (1) Where a member of the navy, army or air force of an associated state has been sentenced by a service court to undergo a punishment involving incarceration, the incarceration may, at the request of the officer in command of the visiting force of that associated state and in accordance with the regulations, be served wholly or partly in a penitentiary, civil prison, service prison or detention barrack, and the provisions of the *National Defence Act* respecting the carrying out of punishments of incarceration imposed upon officers and men of the Canadian Force *mutatis mutandis* apply.

Idem.

(2) The Minister of National Defence shall, in accordance with the regulations, and having regard to the nature of the place of incarceration to which

Visiting Forces (N.A.T)

the offender would have been committed under the law of the associated state, determine whether the offender's punishment is to be served in whole or part in a penitentiary, civil prison, service prison or detention barrack. 1951 (2nd Sess.), c. 28, s. 12.

13. The authority of members of a visiting force to exercise police functions, including the power of arrest, shall be as prescribed in the regulations, but no such regulation shall empower a member of a visiting force to exercise police functions in respect of any person who is not a member of the visiting force. 1951 (2nd Sess.), c. 28, s. 13. Police functions.

14. (1) Subject to such limitations as may be prescribed in the regulations, subsections (2), (3) and (4) of section 200 of the *National Defence Act* apply in relation to courts martial of a visiting force, except that a person required to give evidence before a court martial of a visiting force may be summoned only by a magistrate or justice of the peace whose authority in that respect shall be exercised in accordance with the regulations. Application of provisions of National Defence Act.

(2) Section 244 of the *National Defence Act* applies to any person duly summoned under subsection (1) as though the court martial before which he is summoned to appear were a court martial within the Canadian Forces. 1951 (2nd Sess.), c. 28, s. 14. Idem.

15. Members of a visiting force acting in the course of their duties, except civilian personnel, Possession of explosives, etc.

- (a) may, if authorized to do so by orders of service authorities of the visiting force, possess and carry explosives, ammunition and firearms; and
- (b) are not subject to the provisions of the *Criminal Code* relating to unlawful drilling or the making or possessing of explosives. 1951 (2nd Sess.), c. 28, s. 15.

PART III.

CLAIMS FOR PERSONAL INJURIES AND PROPERTY
DAMAGE.

16. For the purposes of subsection (1) of section 3 of the *Crown Liability Act* Claims against associated states.
- (a) a tort committed by a member of a visiting force while acting within the scope of his duties or employment shall be deemed to have been committed by a servant of the Crown while acting within the scope of his duties or employment; Rep. and New. 1953-54, c. 13, s. 17.
 - (b) property owned, occupied, possessed or controlled by a visiting force shall be deemed to be owned, occupied, possessed or controlled by the Crown; and

Visiting Forces (N.A.T)

- (c) a service motor vehicle of a visiting force shall be deemed to be owned by the Crown.

Enforcement
of judgment
against
member of
visiting
force.

17. A member of a visiting force is not subject to any proceedings for the enforcement of any judgment given against him in Canada in respect of a matter that arose while he was acting within the scope of his duties or employment. 1951 (2nd Sess.), c. 28, s. 17.

Ships.

18. Section 16 does not apply to a claim arising out of or in connection with the navigation or operation of a ship or the loading, carriage or discharge of a cargo, unless the claim is for death or injury to the person. 1951 (2nd Sess.), c. 28, s. 18.

Official
duty.

19. Where a question arises under section 16, 17 or 18 as to whether

- (a) a member of a visiting force was acting within the scope of his duties or employment; or
- (b) a matter in respect of which judgment was given against a member of a visiting force arose while he was acting within the scope of his duties or employment,

the question shall be submitted to an arbitrator appointed in accordance with subparagraph (b) of paragraph 2 of Article VIII of the Agreement, and for the purposes of those sections the decision of the arbitrator is final and conclusive. 1951 (2nd Sess.), c. 28, s. 19.

PART IV.

SECURITY PROVISIONS.

Official
Secrets Act
applicable.

20. Subject to section 21, the *Official Secrets Act* applies and shall be construed as applying in respect of an associated state as though

- (a) a reference in that Act to "office under Her Majesty" included any office or employment in or under any department or branch of the government of an associated state;
- (b) a reference in that Act to "prohibited place" included
 - (i) any work of defence belonging to or occupied or used by or on behalf of an associated state including arsenals, naval, army or air force establishments or stations, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations or offices, and places, other than diplomatic premises of associated states, used for the purpose of building, repairing, making or storing any munitions of war or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war; and
 - (ii) any place, not belonging to an associated state, where any munitions of war or any sketches, models, plans or documents relating

Visiting Forces (N.A.T)

thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of an associated state, or otherwise on behalf of an associated state;

- (c) a reference in that Act to "safety or interests of the state" or to "interest of the state" or to "public interest" included the safety and security interests of an associated state;
- (d) a reference in that Act to "contract made on behalf of Her Majesty" included a contract made on behalf of an associated state;
- (e) the expression "appointed by or acting under the authority of Her Majesty" in that Act included the expression "appointed by or acting under the authority of the government of an associated state"; and
- (f) a reference in that Act to "any member of Her Majesty's forces" included a member of the visiting forces of an associated state.

21. Section 13 of the *Official Secrets Act* does not apply in respect of an ^{Exception.} associated state. 1951 (2nd Sess.), c. 28, s. 21.

PART V.

TAXATION.

22. (1) Where the liability for any form of taxation in Canada depends ^{Residence or domicile.} upon residence or domicile, a period during which a member of a visiting force is in Canada by reason of his being a member of such visiting force shall, for the purpose of such taxation, be deemed not to be a period of residence in Canada and not to create a change of residence or domicile.

(2) A member of a visiting force is exempt from taxation in Canada ^{Salaries.} on the salary and emoluments paid to him as such member by an associated state and in respect of any tangible movable property that is in Canada temporarily by reason of his presence in Canada as such member.

(3) For the purposes of this section, the term "member of a visiting force" ^{Resident Canadian citizens excepted.} does not include a Canadian citizen resident or ordinarily resident in Canada. 1951 (2nd Sess.), c. 28, s. 22.

23. No tax or fee is payable in respect of the licensing or registration of ^{Service vehicles.} service vehicles of a visiting force or in respect of the use of such vehicles on any road in Canada. 1951 (2nd Sess.), c. 28, s. 23.

24. (1) Subject to the regulations, a visiting force may import into ^{Imports.} Canada, free of duty and tax, equipment for the visiting force and such quantities of provisions, supplies and other goods for the exclusive use of the visiting force as in the opinion of the Minister of National Revenue are reasonable.

(2) The Minister of National Revenue may authorize the import into ^{Idem.} Canada, free of duty and tax, of goods for use by dependants of members of a visiting force. 1951 (2nd Sess.), c. 28, s. 24.

Visiting Forces (N.A.T.)

Personal
effects
and motor
vehicles.

- 25.** A member of a visiting force may, in accordance with the regulations,
- (a) at the time of his first arrival to take up service in Canada and at the time of the first arrival of any dependant to join him, import his personal effects and furniture free of duty and tax; and
 - (b) import, free of duty and tax, his private motor vehicle for the personal use of himself and his dependants temporarily, but this paragraph shall not be construed as granting or authorizing the granting of any exemption from taxes or fees in respect of the licensing or the registration of private vehicles or the use of the roads by private vehicles in Canada. 1951 (2nd Sess.), c. 28, s. 25.

Fuel, oil,
etc.

- 26.** Subject to compliance with such conditions as are prescribed by the regulations, no duty or tax is payable on any fuel, oil or lubricants intended for use exclusively in the service vehicles, aircraft or vessels of a visiting force. 1951 (2nd Sess.), c. 28, s. 26.

PART VI.

GENERAL.

Regulations.

- 27.** The Governor in Council may make regulations, not inconsistent with the provisions of this Act,
- (a) for carrying out the Agreement and giving effect to its provisions; and
 - (b) for carrying out the purposes and provisions of this Act. 1951 (2nd Sess.), c. 28, s. 27.

Coming
into force.

- 28.** This Act or any portion thereof shall come into force on a day or days to be fixed by proclamation of the Governor in Council. 1951 (2nd Sess.), c. 28, s. 28.

SCHEDULE

AGREEMENT BETWEEN THE PARTIES TO THE NORTH ATLANTIC TREATY REGARDING THE STATUS OF THEIR FORCES

The Parties to the North Atlantic Treaty signed in Washington on 4th April, 1949,

Considering that the forces of one Party may be sent, by arrangement, to serve in the territory of another Party;

Bearing in mind that the decision to send them and the conditions under which they will be sent, in so far as such conditions are not laid down by the present Agreement, will continue to be the subject of separate arrangements between the Parties concerned;

Desiring, however, to define the status of such forces while in the territory of another Party;

Have agreed as follows:

Visiting Forces (N.A.T.)

ARTICLE I

1. In this Agreement the expression—

- (a) “force” means the personnel belonging to the land, sea or air armed services of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area in connexion with their official duties, provided that the two Contracting Parties concerned may agree that certain individuals, units or formations shall not be regarded as constituting or included in a “force” for the purposes of the present Agreement;
- (b) “civilian component” means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service of that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located;
- (c) “dependent” means the spouse of a member of a force or of a civilian component, or a child of such member depending on him or her for support;
- (d) “sending State” means the Contracting Party to which the force belongs;
- (e) “receiving State” means the Contracting Party in the territory of which the force or civilian component is located, whether it be stationed there or passing in transit;
- (f) “military authorities of the sending State” means those authorities of a sending State who are empowered by its law to enforce the military law of that State with respect to members of its forces or civilian components;
- (g) “North Atlantic Council” means the Council established by Article 9 of the North Atlantic Treaty or any of its subsidiary bodies authorized to act on its behalf.

2. This Agreement shall apply to the authorities of political sub-divisions of the Contracting Parties, within their territories to which the Agreement applies or extends in accordance with Article XX, as it applies to the central authorities of those Contracting Parties, provided, however, that property owned by political sub-divisions shall not be considered to be property owned by a Contracting Party within the meaning of Article VIII.

ARTICLE II

It is the duty of a force and its civilian component and the members thereof as well as their dependents to respect the law of the receiving State, and to abstain from any activity inconsistent with the spirit of the present Agreement, and, in particular, from any political activity in the receiving

Visiting Forces (N.A.T.)

State. It is also the duty of the sending State to take necessary measures to that end.

ARTICLE III

1. On the conditions specified in paragraph 2 of this Article and subject to compliance with the formalities established by the receiving State relating to entry and departure of a force or the members thereof, such members shall be exempt from passport and visa regulations and immigration inspection on entering or leaving the territory of a receiving State. They shall also be exempt from the regulations of the receiving State on the registration and control of aliens, but shall not be considered as acquiring any right to permanent residence or domicile in the territories of the receiving State.

2. The following documents only will be required in respect of members of a force. They must be presented on demand:

- (a) Personal identity card issued by the sending State showing names, date of birth, rank and number (if any), service, and photograph;
- (b) Individual or collective movement order, in the language of the sending State and in the English and French languages, issued by an appropriate agency of the sending State or of the North Atlantic Treaty Organization and certifying to the status of the individual or group as a member or members of a force and to the movement ordered. The receiving State may require a movement order to be countersigned by its appropriate representative.

3. Members of a civilian component and dependents shall be so described in their passports.

4. If a member of a force or of a civilian component leaves the employ of the sending State and is not repatriated, the authorities of the sending State shall immediately inform the authorities of the receiving State, giving such particulars as may be required. The authorities of the sending State shall similarly inform the authorities of the receiving State of any member who has absented himself for more than 21 days.

5. If the receiving State has requested the removal from its territory of a member of a force or civilian component or has made an expulsion order against an ex-member of a force or of a civilian component or against a dependent of a member or ex-member, the authorities of the sending State shall be responsible for receiving the person concerned within their own territory or otherwise disposing of him outside the receiving State. This paragraph shall apply only to persons who are not nationals of the receiving State and have entered the receiving State as members of a force or civilian component or for the purpose of becoming such members, and to the dependents of such persons.

ARTICLE IV

The receiving State shall either

- (a) accept as valid, without a driving test or fee, the driving permit or

Visiting Forces (N.A.T).

licence or military driving permit issued by the sending State or a sub-division thereof to a member of a force or of a civilian component; or

- (b) issue its own driving permit or licence to any member of a force or civilian component who holds a driving permit or licence or military driving permit issued by the sending State or a sub-division thereof, provided that no driving test shall be required.

ARTICLE V

1. Members of a force shall normally wear uniform. Subject to any arrangement to the contrary between the authorities of the sending and receiving States, the wearing of civilian dress shall be on the same conditions as for members of the forces of the receiving State. Regularly constituted units or formations of a force shall be in uniform when crossing a frontier.

2. Service vehicles of a force or civilian component shall carry, in addition to their registration number, a distinctive nationality mark.

ARTICLE VI

Members of a force may possess and carry arms, on condition that they are authorized to do so by their orders. The authorities of the sending State shall give sympathetic consideration to requests from the receiving State concerning this matter.

ARTICLE VII

1. Subject to the provisions of this Article,

- (a) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;
- (b) the authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their dependents with respect to offences committed within the territory of the receiving State and punishable by the law of that State.

2. (a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

- (b) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offences, including offences

11 relating

Visiting Forces (N.A.T.)

relating to the security of that State, punishable by its law but not by the law of the sending State.

- (c) For the purposes of this paragraph and of paragraph 3 of this Article a security offence against a State shall include
 - (i) treason against the State;
 - (ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

- (a) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to
 - (i) offences solely against the property or security of that State, or offences solely against the person or property of another member of the force or civilian component of that State or of a dependent;
 - (ii) offences arising out of any act or omission done in the performance of official duty.
- (b) In the case of any other offence the authorities of the receiving state shall have the primary right to exercise jurisdiction.
- (c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State.

- 5.—(a) The authorities of the receiving and sending States shall assist each other in the arrest of members of a force or civilian component or their dependents in the territory of the receiving State and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.
- (b) The authorities of the receiving State shall notify promptly the military authorities of the sending State of the arrest of any member of a force or civilian component or a dependent.
 - (c) The custody of an accused member of a force or civilian component over whom the receiving State is to exercise jurisdiction shall, if he is in the hands of the sending State, remain with that State until he is charged by the receiving State.

6.—(a) The authorities of the receiving and sending States shall assist each

Visiting Forces (N.A.T.)

other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

- (b) The authorities of the Contracting Parties shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.
- 7.—(a) A death sentence shall not be carried out in the receiving State by the authorities if the sending State if the legislation of the receiving State does not provide for such punishment in a similar case.
- (b) The authorities of the receiving State shall give sympathetic consideration to a request from the authorities of the sending State for assistance in carrying out a sentence of imprisonment pronounced by the authorities of the sending State under the provision of this Article within the territory of the receiving State.

8. Where an accused has been tried in accordance with the provisions of this Article by the authorities of one Contracting Party and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offence within the same territory by the authorities of another Contracting Party. However, nothing in this paragraph shall prevent the military authorities of the sending State from trying a member of its force for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of another Contracting Party.

9. Whenever a member of a force or civilian component or a dependent is prosecuted under the jurisdiction of a receiving State he shall be entitled—

- (a) to a prompt and speedy trial;
- (b) to be informed, in advance of trial, of the specific charge or charges made against him;
- (c) to be confronted with the witnesses against him;
- (d) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State;
- (e) to have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State;
- (f) if he considers it necessary, to have the services of a competent interpreter; and
- (g) to communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at his trial.

Visiting Forces (N.A.T.)

- 10.—(a) Regularly constituted military units or formations of a force shall have the right to police any camps, establishments or other premises which they occupy as the result of an agreement with the receiving State. The military police of the force may take all appropriate measures to ensure the maintenance of order and security on such premises.
- (b) Outside these premises, such military police shall be employed only subject to arrangements with the authorities of the receiving State and in liaison with those authorities, and in so far as such employment is necessary to maintain discipline and order among the members of the force.
11. Each Contracting Party shall seek such legislation as it deems necessary to ensure the adequate security and protection within its territory of installations, equipment, property, records and official information of other Contracting Parties, and the punishment of persons who may contravene laws enacted for that purpose.

ARTICLE VIII

1. Each Contracting Party waives all its claims against any other Contracting Party for damage to any property owned by it and used by its land, sea or air armed services, if such damage—

- (i) was caused by a member or an employee of the armed services of the other Contracting Party in the execution of his duties in connexion with the operation of the North Atlantic Treaty; or
- (ii) arose from the use of any vehicle, vessel or aircraft owned by the other Contracting Party and used by its armed services, provided either that the vehicle, vessel or aircraft causing the damage was being used in connexion with the operation of the North Atlantic Treaty, or that the damage was caused to property being so used.

Claims for maritime salvage by one Contracting Party against any other Contracting Party shall be waived, provided that the vessel or cargo salvaged was owned by a Contracting Party and being used by its armed services in connexion with the operation of the North Atlantic Treaty.

- 2.—(a) In the case of damage caused or arising as stated in paragraph 1 to other property owned by a Contracting Party and located in its territory, the issue of the liability of any other Contracting Party shall be determined and the amount of damage shall be assessed, unless the Contracting Parties concerned agree otherwise, by a sole arbitrator selected in accordance with sub-paragraph (b) of this paragraph. The arbitrator shall also decide any counter-claims arising out of the same incident.
- (b) The arbitrator referred to in sub-paragraph (a) above shall be selected by agreement between the Contracting Parties concerned from

Visiting Forces (N.A.T.)

amongst the nationals of the receiving State who hold or have held high judicial office. If the Contracting Parties concerned are unable within two months, to agree upon the arbitrator, either may request the Chairman of the North Atlantic Council Deputies to select a person with the aforesaid qualifications.

- (c) Any decision taken by the arbitrator shall be binding and conclusive upon the Contracting Parties.
- (d) The amount of any compensation awarded by the arbitrator shall be distributed in accordance with the provisions of paragraph 5(e)(i), (ii) and (iii) of this Article.
- (e) The compensation of the arbitrator shall be fixed by agreement between the Contracting Parties concerned and shall, together with the necessary expenses incidental to the performance of his duties, be defrayed in equal proportions by them.
- (f) Nevertheless, each Contracting Party waives its claim in any such case where the damage is less than:—

Belgium:	B.fr. 70,000	Luxembourg:	L.Fr. 70,000
Canada:	\$ 1,400	Netherlands:	Fl. 5,320
Denmark:	Kr. 9,670	Norway:	Kr. 10,000
France:	F.fr. 490,000	Portugal:	Es. 40,250
Iceland :	Kr. 22,800	United Kingdom:	£ 500
Italy:	Li. 850,000	United States:	\$ 1,400

Any other Contracting Party whose property has been damaged in the same incident shall also waive its claim up to the above amount. In the case of considerable variation in the rates of exchange between these currencies the Contracting Parties shall agree on the appropriate adjustments of these amounts.

3. For the purposes of paragraphs 1 and 2 of this Article the expression "owned by a Contracting Party" in the case of a vessel includes a vessel on bare boat charter to that Contracting Party or requisitioned by it on bare boat terms or seized by it in prize (except to the extent that the risk of loss or liability is borne by some person other than such Contracting Party).

4. Each Contracting Party waives all its claims against any other Contracting Party for injury or death suffered by any member of its armed services while such member was engaged in the performance of his official duties.

5. Claims (other than contractual claims and those to which paragraphs 6 or 7 of this Article apply) arising out of acts or omissions of members of a force or civilian component done in the performance of official duty, or out of any other act, omission or occurrence for which a force or civilian component is legally responsible, and causing damage in the territory of the receiving State to third parties, other than any of the Contracting Parties, shall be dealt with by the receiving State in accordance with the following provisions:—

Visiting Forces (N.A.T.)

- (a) Claims shall be filed, considered and settled or adjudicated in accordance with the laws and regulations of the receiving State with respect to claims arising from the activities of its own armed forces.
- (b) The receiving State may settle any such claims, and payment of the amount agreed upon or determined by adjudication shall be made by the receiving State in its currency.
- (c) Such payment, whether made pursuant to a settlement or to adjudication of the case by a competent tribunal of the receiving State, or the final adjudication by such a tribunal denying payment, shall be binding and conclusive upon the Contracting Parties.
- (d) Every claim paid by the receiving State shall be communicated to the sending States concerned together with full particulars and a proposed distribution in conformity with sub-paragraphs (e)(i), (ii) and (iii) below. In default of a reply within two months, the proposed distribution shall be regarded as accepted.
- (e) The cost incurred in satisfying claims pursuant to the preceding sub-paragraphs and paragraph 2 of this Article shall be distributed between the Contracting Parties, as follows:—
 - (i) Where one sending State alone is responsible, the amount awarded or adjudged shall be distributed in the proportion of 25 per cent. chargeable to the receiving State and 75 per cent. chargeable to the sending State.
 - (ii) Where more than one State is responsible for the damage, the amount awarded or adjudged shall be distributed equally among them: however, if the receiving State is not one of the States responsible, its contribution shall be half that of each of the sending States.
 - (iii) Where the damage was caused by the armed services of the Contracting Parties and it is not possible to attribute it specifically to one or more of those armed services, the amount awarded or adjudged shall be distributed equally among the Contracting Parties concerned; however, if the receiving State is not one of the States by whose armed services the damage was caused, its contribution shall be half that of each of the sending States concerned.
 - (iv) Every half-year, a statement of the sums paid by the receiving State in the course of the half-yearly period in respect of every case regarding which the proposed distribution on a percentage basis has been accepted, shall be sent to the sending States concerned, together with a request for reimbursement. Such reimbursement shall be made within the shortest possible time, in the currency of the receiving State.
- (f) In cases where the application of the provisions of sub-paragraphs (b) and (e) of this paragraph would cause a Contracting Party serious

Visiting Forces (N.A.T.)

hardship, it may request the North Atlantic Council to arrange a settlement of a different nature.

- (g) A member of a force or civilian component shall not be subject to any proceedings for the enforcement of any judgment given against him in the receiving State in a matter arising from the performance of his official duties.
- (h) Except in so far as sub-paragraph (e) of this paragraph applies to claims covered by paragraph 2 of this Article, the provisions of this paragraph shall not apply to any claim arising out of or in connection with the navigation or operation of a ship or the loading, carriage, or discharge of a cargo, other than claims for death or personal injury to which paragraph 4 of this Article does not apply.

6. Claims against members of a force or civilian component arising out of tortious acts or omissions in the receiving State not done in the performance of official duty shall be dealt with in the following manner:—

- (a) The authorities of the receiving State shall consider the claim and assess compensation to the claimant in a fair and just manner, taking into account all the circumstances of the case, including the conduct of the injured person, and shall prepare a report on the matter.
- (b) The report shall be delivered to the authorities of the sending State, who shall then decide without delay whether they will offer an *ex gratia* payment, and if so, of what amount.
- (c) If an offer of *ex gratia* payment is made, and accepted by the claimant in full satisfaction of his claim, the authorities of the sending State shall make the payment themselves and inform the authorities of the receiving State of their decision and of the sum paid.
- (d) Nothing in this paragraph shall affect the jurisdiction of the courts of the receiving State to entertain an action against a member of a force or of a civilian component unless and until there has been payment in full satisfaction of the claim.

7. Claims arising out of the unauthorized use of any vehicle of the armed services of a sending State shall be dealt with in accordance with paragraph 6 of this Article, except in so far as the force or civilian component is legally responsible.

8. If a dispute arises as to whether a tortious act or omission of a member of a force or civilian component was done in the performance of official duty or as to whether the use of any vehicle of the armed services of a sending State was unauthorized, the question shall be submitted to an arbitrator appointed in accordance with paragraph 2(b) of this Article, whose decision on this point shall be final and conclusive.

9. The sending State shall not claim immunity from the jurisdiction of the courts of the receiving State for members of a force or civilian component

Visiting Forces (N.A.T.)

in respect of the civil jurisdiction of the courts of the receiving State except to the extent provided in paragraph 5(g) of this Article.

10. The authorities of the sending State and of the receiving State shall co-operate in the procurement of evidence for a fair hearing and disposal of claims in regard to which the Contracting Parties are concerned.

ARTICLE IX

1. Members of a force or of a civilian component and their dependents may purchase locally goods necessary for their own consumption, and such services as they need, under the same conditions as the nationals of the receiving State.

2. Goods which are required from local sources for the subsistence of a force or civilian component shall normally be purchased through the authorities which purchase such goods for the armed services of the receiving State. In order to avoid such purchases having any adverse effect on the economy of the receiving State, the competent authorities of that State shall indicate, when necessary, any articles the purchase of which should be restricted or forbidden.

3. Subject to agreements already in force or which may hereafter be made between the authorized representatives of the sending and receiving States, the authorities of the receiving State shall assume sole responsibility for making suitable arrangements to make available to a force or a civilian component the buildings and grounds which it requires, as well as facilities and services connected therewith. These agreements and arrangements shall be, as far as possible, in accordance with the regulations governing the accommodation and billeting of similar personnel of the receiving State. In the absence of a specific contract to the contrary, the laws of the receiving State shall determine the rights and obligations arising out of the occupation or use of the buildings, grounds, facilities or services.

4. Local civilian labour requirements of a force or civilian component shall be satisfied in the same way as the comparable requirements of the receiving State and with the assistance of the authorities of the receiving State through the employment exchanges. The conditions of employment and work, in particular wages, supplementary payments and conditions for the protection of workers, shall be those laid down by the legislation of the receiving State. Such civilian workers employed by a force or civilian component shall not be regarded for any purpose as being members of that force or civilian component.

5. When a force or a civilian component has at the place where it is stationed inadequate medical or dental facilities, its members and their dependents may receive medical and dental care, including hospitalization, under the same conditions as comparable personnel of the receiving State.

6. The receiving State shall give the most favourable consideration to requests for the grant to members of a force or of a civilian component of travelling facilities and concessions with regard to fares. These facilities and con-

Visiting Forces (N.A.T.)

cessions will be the subject of special arrangements to be made between the Governments concerned.

7. Subject to any general or particular financial arrangements between the Contracting Parties, payment in local currency for goods, accommodation and services furnished under paragraphs 2, 3, 4 and, if necessary, 5 and 6, of this Article shall be made promptly by the authorities of the force.

8. Neither a force, nor a civilian component, nor the members thereof, nor their dependents, shall by reason of this Article enjoy any exemption from taxes or duties relating to purchases and services chargeable under the fiscal regulations of the receiving State.

ARTICLE X

1. Where the legal incidence of any form of taxation in the receiving State depends upon residence or domicile, periods during which a member of a force or civilian component is in the territory of that State by reason solely of his being a member of such force or civilian component shall not be considered as periods of residence therein, or as creating a change of residence or domicile, for the purposes of such taxation. Members of a force or civilian component shall be exempt from taxation in the receiving State on the salary and emoluments paid to them as such members by the sending State or on any tangible movable property the presence of which in the receiving State is due solely to their temporary presence there.

2. Nothing in this Article shall prevent taxation of a member of a force or civilian component with respect to any profitable enterprise, other than his employment as such member, in which he may engage in the receiving State, and, except as regards his salary and emoluments and the tangible movable property referred to in paragraph 1, nothing in this Article shall prevent taxation to which, even if regarded as having his residence or domicile outside the territory of the receiving State, such a member is liable under the law of that State.

3. Nothing in this Article shall apply to "duty" as defined in paragraph 12 of Article XI.

4. For the purposes of this Article the term "member of a force" shall not include any person who is a national of the receiving State.

ARTICLE XI

1. Save as provided expressly to the contrary in this Agreement, members of a force and of a civilian component as well as their dependents shall be subject to the laws and regulations administered by the customs authorities of the receiving State. In particular the customs authorities of the receiving State shall have the right, under the general conditions laid down by the laws and regulations of the receiving State, to search members of a force or civilian com-

Visiting Forces (N.A.T.)

ponent and their dependents and to examine their luggage and vehicles, and to seize articles pursuant to such laws and regulations.

2.—(a) The temporary importation and the re-exportation of service vehicles of a force or civilian component under their own power shall be authorized free of duty on presentation of a triptyque in the form shown in the Appendix to this Agreement.

(b) The temporary importation of such vehicles not under their own power shall be governed by paragraph 4 of this Article and the re-exportation thereof by paragraph 8.

(c) Service vehicles of a force or civilian component shall be exempt from any tax payable in respect of the use of vehicles on the roads.

3. Official documents under official seal shall not be subject to customs inspection. Couriers, whatever their status, carrying these documents must be in possession of an individual movement order, issued in accordance with paragraph 2(b) of Article III. This movement order shall show the number of despatches carried and certify that they contain only official documents.

4. A force may import free of duty the equipment for the force and reasonable quantities of provisions, supplies and other goods for the exclusive use of the force and, in cases where such use is permitted by the receiving State, its civilian component and dependents. This duty-free importation shall be subject to the deposit, at the customs office for the place of entry, together with such customs documents as shall be agreed, of a certificate in a form agreed between the receiving State and the sending State signed by a person authorized by the sending State for that purpose. The designation of the person authorized to sign the certificates as well as specimens of the signatures and stamps to be used, shall be sent to the customs administration of the receiving State.

5. A member of a force or civilian component may, at the time of his first arrival to take up service in the receiving State or at the time of the first arrival of any dependent to join him, import his personal effects and furniture free of duty for the term of such service.

6. Members of a force or civilian component may import temporarily free of duty their private motor vehicles for the personal use of themselves and their dependents. There is no obligation under this Article to grant exemption from taxes payable in respect of the use of roads by private vehicles.

7. Imports made by the authorities of a force other than for the exclusive use of that force and its civilian component, and imports, other than those dealt with in paragraphs 5 and 6 of this Article, effected by members of a force or civilian component are not, by reason of this Article, entitled to any exemption from duty or other conditions.

8. Goods which have been imported duty-free under paragraphs 2(b), 4, 5 or 6 above—

(a) may be re-exported freely, provided that, in the case of goods imported under paragraph 4, a certificate, issued in accordance with that paragraph, is presented to the customs office: the customs authorities,

Visiting Forces (N.A.T.)

however, may verify that goods re-exported are as described in the certificate, if any, and have in fact been imported under the conditions of paragraphs 2(b), 4, 5 or 6 as the case may be;

- (b) shall not normally be disposed of in the receiving State by way of either sale or gift: however, in particular cases such disposal may be authorized on conditions imposed by the authorities concerned of the receiving State (for instance, on payment of duty and tax and compliance with the requirements of the controls of trade and exchange).

9. Goods purchased in the receiving State shall be exported therefrom only in accordance with the regulations in force in the receiving State.

10. Special arrangements for crossing frontiers shall be granted by the customs authorities to regularly constituted units or formations, provided that the customs authorities concerned have been duly notified in advance.

11. Special arrangements shall be made by the receiving State so that fuel, oil and lubricants for use in service vehicles, aircraft and vessels of a force or civilian component, may be delivered free of all duties and taxes.

12. In paragraphs 1-10 of this Article—

“duty” means customs duties and all other duties and taxes payable on importation or exportation, as the case may be, except dues and taxes which are no more than charges for services rendered;

“importation” includes withdrawal from customs warehouses or continuous customs custody, provided that the goods concerned have not been grown, produced or manufactured in the receiving State.

13. The provisions of this Article shall apply to the goods concerned not only when they are imported into or exported from the receiving State, but also when they are in transit through the territory of a Contracting Party, and for this purpose the expression “receiving State” in this Article shall be regarded as including any Contracting Party through whose territory the goods are passing in transit.

ARTICLE XII

1. The customs or fiscal authorities of the receiving State may, as a condition of the grant of any customs or fiscal exemption or concession provided for in this Agreement, require such conditions to be observed as they may deem necessary to prevent abuse.

2. These authorities may refuse any exemption provided for by this Agreement in respect of the importation into the receiving State of articles grown, produced or manufactured in that State which have been exported therefrom without payment of, or upon repayment of, taxes or duties which would have been chargeable but for such exportation. Goods removed from a customs warehouse shall be deemed to be imported if they were regarded as having been exported by reason of being deposited in the warehouse.

Visiting Forces (N.A.T.)

ARTICLE XIII

1. In order to prevent offences against customs and fiscal laws and regulations, the authorities of the receiving and of the sending States shall assist each other in the conduct of enquiries and the collection of evidence.
2. The authorities of a force shall render all assistance within their power to ensure that articles liable to seizure by, or on behalf of, the customs or fiscal authorities of the receiving State are handed to those authorities.
3. The authorities of a force shall render all assistance within their power to ensure the payment of duties, taxes and penalties payable by members of the force or civilian component or their dependents.
4. Service vehicles and articles belonging to a force or to its civilian component, and not to a member of such force or civilian component, seized by the authorities of the receiving State in connection with an offence against its customs or fiscal laws or regulations shall be handed over to the appropriate authorities of the force concerned.

ARTICLE XIV

1. A force, a civilian component and the members thereof, as well as their dependents, shall remain subject to the foreign exchange regulations of the sending State and shall also be subject to the regulations of the receiving State.
2. The foreign exchange authorities of the sending and the receiving States may issue special regulations applicable to a force or civilian component or the members thereof as well as to their dependents.

ARTICLE XV

1. Subject to paragraph 2 of this Article, this Agreement shall remain in force in the event of hostilities to which the North Atlantic Treaty applies, except that the provisions for settling claims in paragraphs 2 and 5 of Article VIII shall not apply to war damage, and that the provisions of the Agreement, and, in particular of Articles III and VII, shall immediately be reviewed by the Contracting Parties concerned, who may agree to such modifications as they may consider desirable regarding the application of the Agreement between them.
2. In the event of such hostilities, each of the Contracting Parties shall have the right, by giving 60 days' notice to the other Contracting Parties, to suspend the application of any of the provisions of this Agreement so far as it is concerned. If this right is exercised, the Contracting Parties shall immediately consult with a view to agreeing on suitable provisions to replace the provisions suspended.

Visiting Forces (N.A.T.)

ARTICLE XVI

All differences between the Contracting Parties relating to the interpretation or application of this Agreement shall be settled by negotiation between them without recourse to any outside jurisdiction. Except where express provision is made to the contrary in this Agreement, differences which cannot be settled by direct negotiation shall be referred to the North Atlantic Council.

ARTICLE XVII

Any Contracting Party may at any time request the revision of any Article of this Agreement. The request shall be addressed to the North Atlantic Council.

ARTICLE XVIII

1. The present Agreement shall be ratified and the instruments of ratification shall be deposited as soon as possible with the Government of the United States of America, which shall notify each signatory State of the date of deposit thereof.

2. Thirty days after four signatory States have deposited their instruments of ratification the present Agreement shall come into force between them. It shall come into force for each other signatory State thirty days after the deposit of its instrument of ratification.

3. After it has come into force, the present Agreement shall, subject to the approval of the North Atlantic Council and to such conditions as it may decide, be open to accession on behalf of any State which accedes to the North Atlantic Treaty. Accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America, which shall notify each signatory and acceding State of the date of deposit thereof. In respect of any State on behalf of which an instrument of accession is deposited, the present Agreement shall come into force thirty days after the date of the deposit of such instrument.

ARTICLE XIX

1. The present Agreement may be denounced by any Contracting Party after the expiration of a period of four years from the date on which the Agreement comes into force.

2. The denunciation of the Agreement by any Contracting Party shall be effected by a written notification addressed by that Contracting Party to the Government of the United States of America which shall notify all the other Contracting Parties of each such notification and the date of receipt thereof.

3. The denunciation shall take effect one year after the receipt of the notification by the Government of the United States of America. After the expiration of this period of one year, the Agreement shall cease to be in force as regards the Contracting Party which denounces it, but shall continue in force for the remaining Contracting Parties.

Visiting Forces (N.A.T.)

ARTICLE XX

1. Subject to the provisions of paragraphs 2 and 3 of this Article, the present Agreement shall apply only to the metropolitan territory of a Contracting Party.

2. Any State may, however, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare by notification given to the Government of the United States of America that the present Agreement shall extend (subject, if the State making the declaration considers it to be necessary, to the conclusion of a special agreement between that State and each of the sending States concerned), to all or any of the territories for whose international relations it is responsible in the North Atlantic Treaty area. The present Agreement shall then extend to the territory or territories named therein thirty days after the receipt by the Government of the United States of America of the notification, or thirty days after the conclusion of the special agreements if required, or when it has come into force under Article XVIII, whichever is the later.

3. A State which has made a declaration under paragraph 2 of this Article extending the present Agreement to any territory for whose international relations it is responsible may denounce the Agreement separately in respect of that territory in accordance with the provisions of Article XIX.

In witness whereof the undersigned Plenipotentiaries have signed the present Agreement.

Done in London this nineteenth day of June, 1951, in the English and French languages, both texts being equally authoritative, in a single original which shall be deposited in the archives of the Government of the United States of America. The Government of the United States of America shall transmit certified copies thereof to all the signatory and acceding States.

For the Kingdom of Belgium:

OBERT DE THIEUSIES.

For Canada:

L. D. WILGRESS.

For the Kingdom of Denmark:

STEENSEN-LETH.

For France:

HERVÉ ALPHAND.

For Iceland:

GUNNLAUGER PÉTURSSON.

For Italy:

A. ROSSI-LONGHI.

Visiting Forces (N.A.T.)

For the Grand Duchy of Luxembourg:

A CLASEN.

For the Kingdom of the Netherlands:

A. W. L. TJARDA VAN STARKENBORGH-STACHOUWER.

For the Kingdom of Norway:

DAG BRYN.

For Portugal:

R. ENNES ULRICH.

The Agreement is only applicable to the territory of Continental Portugal, with the exclusion of the Adjacent Islands and the Overseas Provinces.

For the United Kingdom of Great Britain and Northern Ireland:

HERBERT MORRISON.

For the United States of America:

CHARLES M. SPOFFORD.

Visiting Forces (N.A.T.)

APPENDIX

Country Ministry or Service

TRIPTYQUE*

Valid from To
for temporary importation to
of the following service vehicle:—
Type

Registration Number Engine Number

Spare tyres

Fixed Communication Equipment

Name and signature of the holder of the triptyque

Date of issue By order of

TEMPORARY EXITS AND ENTRIES

<i>Name of Port or Customs Station</i>	<i>Date</i>	<i>Signature and Stamp of Customs Office</i>
Exit		
Entry		
Exit		
Entry		
Exit		
Entry		
Exit		
Entry		

*This document shall be in the language of the sending State and in the English and French language.

1951 (2nd Sess.), c. 28, Sch.

REGULATIONS UNDER THE VISITING FORCES (NORTH ATLANTIC TREATY) ACT

(Approved by Order in Council PC 1956-563 of 12 Apr 56)

Short Title

1. These regulations may be cited as the *Visiting Forces (North Atlantic Treaty) Regulations*.

Interpretation

2. In these regulations,

- (a) "Act" means the *Visiting Forces (North Atlantic Treaty) Act*; and
- (b) "Attorney General" means
 - (i) where the civil court is situated in the Northwest Territories or the Yukon Territory or where the consent of the Attorney General of Canada is a prerequisite to the institution of criminal proceedings, the Attorney General of Canada or his lawful deputy, and
 - (ii) in all other cases, the Attorney General of the province in which the civil court is situated or his lawful deputy.

Waiver of Jurisdiction of Civil Courts

3. (1) Subject to this section, the Attorney General may waive the primary right of a civil court to exercise jurisdiction in respect of any act or omission constituting an offence against any law in force in Canada alleged to have been committed by a member of a visiting force in favour of a service court of the visiting force

- (a) by sending a waiver signed by the Attorney General, in Form A or to the like effect, to the officer in command of the visiting force, where no information has been laid against such member before the civil court in respect of the act or omission, and
- (b) by complying with paragraph (a) and by sending a copy of the waiver to the judge, magistrate or justice who presides over the civil court, where such an information has been laid.

- (2) No waiver shall be made under this section in respect of an act or omission after a civil court has made an adjudication in respect thereof.

- (3) No request is necessary to empower the Attorney General to make a waiver under this section, but the officer in command of a visiting force may complete and send a request signed by him, in Form B or to the like effect, to the Attorney General setting forth the reasons for which a waiver is requested.

Waiver of Jurisdiction of Service Courts

4. (1) The officer in command of a visiting force may waive the primary right of a service court to exercise jurisdiction in respect of the alleged commission by a member of the visiting force of an offence respecting any matter described in paragraphs (a) to (d) of subsection (2) of section 7 of the Act in favour of a civil court by completing and sending a waiver signed by him, in Form C or to the like effect, to the Attorney General.

Visiting Forces (NAT) Regulations

(2) No request is necessary to empower the officer in command of a visiting force to make a waiver under this section, but the Attorney General may complete and send a request signed by him, in Form D or to the like effect, to the officer in command of the visiting force setting forth the reasons for which a waiver is requested.

Incarceration

5. (1) A request pursuant to section 12 of the Act by the officer in command of a visiting force of an associated state for the incarceration of a member of that visiting force in a penitentiary, civil prison, service prison or detention barrack shall be in Form E or to the like effect and shall

- (a) set forth the reasons for the request, and
- (b) contain an undertaking on behalf of the associated state to reimburse
 - (i) the Government of Canada if he is incarcerated in a penitentiary, service prison or detention barrack operated at the expense of the Government of Canada, and
 - (ii) the Government of the province if he is incarcerated in a prison operated at the expense of the Government of a province, for the cost of rations to be supplied by such government to the member of the visiting force while he is incarcerated,

and such request shall be signed by the officer in command of the visiting force.

(2) The Minister of National Defence shall, in his sole discretion, determine whether a request under section 12 of the Act is to be granted.

(3) Where the Minister of National Defence determines that a request under section 12 of the Act is to be granted, he shall designate the penitentiary, civil prison, service prison or detention barrack to which the person in respect of whom the request is made is to be committed and shall, in writing, in Form F or to the like effect, notify the officer in command of the visiting force accordingly and of his appointment, pursuant to section 178 of the *National Defence Act*, as a committing authority in relation to the committal to the designated penitentiary, civil prison, service prison or detention barrack, as the case may be, of the person named in the notification.

(4) A committal order issued by the officer in command of a visiting force pursuant to section 178 of the *National Defence Act* shall be in Form G or to the like effect.

Police Functions

6. (1) A member of the military police of a visiting force may, in relation to any member of that force, exercise the same police functions that a peace officer is authorized by the *Criminal Code* to exercise.

(2) Any member of a visiting force may, in relation to any other member of that force, exercise the same police functions as a person who is not a peace officer is authorized under the *Criminal Code* to exercise.

Summoning Witnesses

7. (1) Where a person is likely to give material evidence before a court martial of a visiting force, a subpoena, in Form H or to the like effect, may be issued in accordance with this section requiring that person to attend and give evidence.

(2) A subpoena issued under the authority of this section shall be signed by a magistrate or justice, as the case may be, and where the person whose attendance is required is not within the province in which the proceedings were instituted, the subpoena shall not be issued except pursuant to an order of a county or district court judge or a judge

Visiting Forces (NAT) Regulations

of a superior court of criminal jurisdiction, as defined in the *Criminal Code*, having jurisdiction in the province in which the proceedings were instituted.

Witness Fees

8. A witness who attends before a court martial of a visiting force to give evidence is entitled to receive the same fees and allowances as he would be entitled to receive if he had appeared for that purpose in proceedings instituted under the *Criminal Code*.

SCHEDULE**FORM A (section 3(1))**

To the Officer in Command of

.....
 (visiting force)
 I, the undersigned, being the Attorney General (or Deputy Attorney General) of
, do hereby waive, in favour of the service courts of
 (Canada or province)
, the primary right of the civil courts of
 (visiting force) (province or territory)
 to exercise jurisdiction in respect of
 (name of member)
 a member of that visiting force, who is alleged to have committed an offence against a
 law in force in Canada, namely, that (here describe alleged circumstances of offence).
 Dated at, this day of
, 195.....

.....
 (Attorney General of Canada or province)

FORM B (section 3(3))

To the Attorney General of

.....
 (Canada or Province)
 Whereas is a member of
 (name of member)
, a visiting force within the meaning of the *Visiting
 Forces (North Atlantic Treaty) Act*;
 And whereas the said is alleged to have
 (name of member)
 committed an offence against a law in force in Canada, namely, that (here describe the
 alleged circumstances of the offence);
 And whereas it appears to the undersigned, the officer in command of the visiting
 force, that the primary right of the civil courts of
 (province or territory)
 to exercise jurisdiction in respect of the alleged commission by the said member of the
 said offence should be waived for the following reasons:
 This is, therefore, to request that the primary right of the civil courts of
 (province or territory)
 to exercise jurisdiction in respect of the alleged commission by
 the said member of the said offence be waived.
 Dated at, this day of
, 195.....

.....
 (officer in command)

.....
 (visiting force)

Visiting Forces (NAT) Regulations

FORM C (section 4(1))

To the Officer in Command of

.....
(visiting force)

I, the undersigned, being the Attorney General of.....
(Canada or province)
do hereby request the waiver of the primary right of the service courts of
(visiting force)
.....to exercise jurisdiction in respect of.....
(name of member)

a member of that visiting force, who is alleged to have committed an offence mentioned in subsection (2) of section 7 of the said Act, namely, that (here describe alleged circumstances of offence).

The reasons for which this waiver of jurisdiction is sought are:
(here set forth reasons)

Dated at....., this.....day of
....., 195.....

.....
(Attorney General of Canada or province)

FORM D (section 4(2))

To the Attorney General of

.....
(Canada or province)

I, the undersigned, being the officer in command of.....
(visiting force)
do hereby waive, in favour of the civil courts of....., the
(province or territory)
primary right of the service courts of the said visiting force to exercise jurisdiction in respect of.....
(name of member), a member of that visiting force,

who is alleged to have committed an offence mentioned in subsection (2) of section 7 of the *Visiting Forces (North Atlantic Treaty) Act*, namely, that (here describe alleged circumstances of offence).

Dated at....., this.....
day of....., 195.....

.....
(officer in command)

.....
(visiting force)

Visiting Forces (NAT) Regulations

FORM E (Section 5(1))

To the Minister of National Defence

Whereas..... is a member of the (Navy,
(name of member)
Army or Air Force) of....., an associated state within the meaning of
(country)
the *Visiting Forces (North Atlantic Treaty) Act*;

And whereas the said member has been sentenced by a service court to undergo a punishment involving incarceration;

And whereas it is desirable that the incarceration be served wholly or partly in a penitentiary, civil prison or detention barrack for the reason that (here set out reasons for the request);

This, therefore, is to request you to determine whether the punishment of the said member is to be served in whole or part in a penitentiary, civil prison, service prison, or detention barrack;

And this is further an undertaking on behalf of the Government of
(country)

to reimburse the Government of Canada for the cost of rations to be supplied to the said member while he is incarcerated, if he is incarcerated in a penitentiary, service prison or detention barrack operated at the expense of the Government of Canada, and if he is incarcerated in a prison operated at the expense of the government of a province, to reimburse the government of the province for the cost of rations to be supplied to the said member while he is incarcerated.

Dated at....., this.....
day of....., 195.....

.....
(officer in command)

.....
(visiting force)

FORM F (section 5(3))

To the Officer in Command of

.....
(visiting force)

Whereas....., a member of the (Navy,
(name of member)
Army or Air Force) of....., an associated state within the meaning
(country)
of the *Visiting Forces (North Atlantic Treaty) Act*, has been sentenced by a service court to undergo a punishment involving incarceration;

And whereas you have requested that it be determined whether such punishment is to be served in whole or in part in a penitentiary, civil prison or detention barrack;

This is therefore to notify you

That I have determined that the said.....
(name of member)

shall serve his incarceration in the.....at
(penitentiary, civil prison, service prison or detention barrack)

....., in the province (or territory) of....., and

That, pursuant to section 178 of the *National Defence Act*, I hereby appoint you a committing authority within the meaning of that section in relation to the committal to the saidof the said
(penitentiary, civil prison, service prison or detention barrack)

.....
(name of member)

.....
(Minister of National Defence)

Visiting Forces (NAT) Regulations

FORM G (section 5(4))

WARRANT OF COMMITTAL

Canada, Province of

.....
 To the Keeper of the (penitentiary, civil prison, service prison or detention barrack,
 as the case may be) at.....;

Whereas....., a member of the (Navy,
 (name of member)

Army or Air Force, as the case may be) of....., an associated state
 (country)

within the meaning of the *Visiting Forces (North Atlantic Treaty) Act*, was on the.....
 day of.....sentenced by a service court to undergo a punishment in-
 volving incarceration, and it was adjudged that he should, for his offence, be imprisoned
 for the term of.....;

And whereas, pursuant to subsection (2) of section 12 of the said Act, the Minister
 of National Defence has determined that the punishment is to be served (in whole or in
 part) in the (penitentiary, civil prison, service prison or detention barrack, as the case
 may be) at.....;

This is, therefore, to command you, in Her Majesty's name, to receive the said mem-
 ber into custody in the said (penitentiary, civil prison, service prison or detention bar-
 rack, as the case may be) and imprison him there for the term of.....,
 and for so doing this is a sufficient warrant.

Dated at....., this.....day
 of....., 195.....

.....
 (A committing authority under section 178 of the National Defence Act)

FORM H (section 7(1))

SUBPOENA TO A WITNESS

Canada, Province of

.....
 To.....(occupation):
 (name of witness)

Whereas....., a member of the
 (name of member)

....., has been charged that (state offence as in the charge) and it has been
 (visiting force)

made to appear that you are likely to give material evidence for (the prosecution or the
 defence);

This is, therefore, to command you to attend before (set out name of tribunal) on
the.....day of....., 195....., at....
o'clock in the.....noon at....., to give
 evidence concerning the said charge*

Dated this.....day of.....,
 at.....

.....
 (Magistrate or justice)

*Where a witness is required to produce documents add the following:

and to bring with you any writings in your possession or under your control that
 relate to the said charge, and more particularly the following: (specify any writings
 required)

APPENDIX XIV

COURT MARTIAL APPEAL BOARD

RULES OF APPEAL PROCEDURE

Interpretation

1. These rules may be cited as the *Rules of Appeal Procedure*.
2. Section 2 of the National Defence Act, and except in so far as may be inconsistent with that section, the Interpretation Act, and amendments thereto, and the interpretation sections of the Criminal Code, and amendments thereto, shall apply to these rules.
3. In these rules,
 - (a) "Act" means the National Defence Act;
 - (b) "Board" means the Court Martial Appeal Board;
 - (c) "Chairman" means the Chairman of the Board;
 - (d) "presiding member" means a member of the Board appointed by the Chairman to preside at any sittings of the Board in his place; and
 - (e) "Registrar" means the Registrar of the Board.

Preliminary action respecting appeals

4. (1) Where an appeal, other than an appeal that is referred to the Board for summary determination under section 194A of the Act, is to be referred by the Judge Advocate General to the Board, the Judge Advocate General shall forward to the Registrar
 - (a) the statement of appeal,
 - (b) the original Minutes of the proceedings of the court martial in respect of which the appeal is taken and five copies thereof,
 - (c) all other documents and records relevant to the appeal that were produced at the court martial, and
 - (d) all other documents, records and exhibits required by the Chairman or presiding member.
- (2) Where an appeal is to be referred by the Judge Advocate General to the Board for summary determination under section 194A of the Act, the Judge Advocate General shall forward to the Registrar
 - (a) the documents mentioned in paragraphs (a) to (d) of subsection (1), other than the five copies of the original Minutes of the proceedings of the court martial; and
 - (b) any letters, messages and other documents relating to the abandonment of the appeal,

and he may also present such brief or argument in writing relating to the grounds of the appeal as he deems fit.

5. The Registrar, upon receipt of a statement of appeal, shall forthwith notify the Chairman, and thereupon the Chairman shall fix a time and, subject to the requirements of the Minister under subsection (4) of section 190 of the Act, a place for the hearing of the appeal.

6. Except in respect of appeals referred for summary determination under section 194A of the Act, the Registrar shall cause to be served upon the parties at least two weeks before the date set for the hearing of the appeal a notice of hearing giving particulars of the time and place fixed for the hearing of an appeal.

7. The Chairman shall designate three or more members of the Board to hear an appeal and, when he is not included in the number so designated, the Chairman shall name one of the other members so designated to be the presiding member for such appeal: Provided, however, that the Chairman, at any time prior to the hearing of the appeal, may substitute for any member or members so designated any other member or members of the Board, and may vary the number of members designated to hear the appeal, provided always that such number shall not be less than three.

8. The Chairman or presiding member may postpone the hearing of an appeal and, except in the case of an appeal referred for summary determination under section 194A of the Act, give reasonable notice of any such postponement to all parties.

9. Following receipt of a notice of hearing, any party may apply in writing to the Board for the appeal to be heard at a time other than specified in the notice of hearing; an application under this section shall contain the reasons in support thereof, shall be made as promptly as possible after receipt of the notice of hearing, and in any event prior to five clear days before the time specified in the notice of hearing, and may be made by telegram or in writing addressed to:

The Registrar,
Court Martial Appeal Board,
OTTAWA, Ontario;

the Chairman or presiding member shall decide upon every application made under this section and notification of his decision shall be given to all parties by the Registrar.

10. A statement of appeal may be amended or extended by the appellant or his counsel, if any, at any time prior to five clear days before the commencement of the hearing of the appeal or, with the consent of the Chairman or presiding member, at any other time; every amendment to or extension of a statement of appeal shall be filed with the Registrar.

11. The Chairman or presiding member may order that written submissions be filed prior to the oral hearing of an appeal or may, with the consent of both parties, order that written submissions be filed in place of an oral hearing: Provided, however, that when such an order has been made for the filing of written submissions in place of an oral hearing, the Chairman or the presiding member may, at any time subsequent thereto, direct that the appeal or any part thereof shall be heard orally.

Representation of parties

12. Her Majesty shall be represented on an appeal by such officer as may be designated by the appropriate chief of staff or, if no such officer is designated, by a barrister or

advocate appointed by the Minister of Justice with the concurrence of the Minister of National Defence.

13. In prosecuting his appeal, the appellant shall have the right to be represented by counsel of his own choice or, if he so desires and the Minister of National Defence approves, by counsel appointed by the Minister of Justice; where counsel selected by the appellant, or appointed by the Minister of Justice to represent the appellant, fails to appear, the Chairman or presiding member shall direct such course or action as may seem to him appropriate in the circumstances.

14. The Minister of National Defence may direct that all or any of the fees and charges of counsel for the appellant shall be paid by Her Majesty

- (a) where the appellant is represented by counsel appointed by the Minister of Justice; or
- (b) where the appellant is represented by counsel of his own choice and succeeds either in whole or in part on his appeal.

Appearance of Appellant

15. The appellant may attend or appear at the hearing of an appeal with the consent of the Chairman or presiding member, but in a case where the punishment of death has been imposed upon him by the court martial he shall have the right to be present.

16. Where an appellant who is in close custody attends or appears before the Board, he shall continue to be held in close custody unless the Chairman or presiding member otherwise directs, and he may be accompanied at the hearing by such persons as may be required to keep him in close custody.

Practice and Procedure at hearings

17. On the hearing of an appeal no grounds of appeal may be argued, save by leave of the Chairman or presiding member, other than those set out in the statement of appeal, including any amendments thereto or extensions thereof made under these rules.

18. No new evidence may be introduced at the hearing of an appeal without the consent or direction of the Chairman or presiding member.

19. On the oral hearing of an appeal the appellant or his counsel, if any, shall be heard first, and he shall have the right to reply to the arguments, if any, advanced by Her Majesty's representative.

20. A witness appearing at a hearing shall be required to give his evidence under oath or solemn affirmation in the form prescribed for use in the case of a court martial.

21. In each case, the laws of evidence that applied before the court martial at the trial shall apply before the Board on the appeal.

22. The Chairman or presiding member may adjourn any sitting or hearing from time to time.

Dissent upon decision

23. Where an appeal is dismissed but there is dissent in the Board, written reasons shall be given both by the majority and the minority and copies of such reasons shall be served upon all parties within fourteen days after the date of the decision of the Board.

General

24. An appellant may abandon his appeal at any time by notice in writing, signed by the appellant and by his counsel, if any, forwarded to the Registrar, and there upon the appeal shall be at an end.

25. An appeal may be considered to be abandoned for want of prosecution where

- (a) the statement of appeal does not contain particulars of the grounds upon which the appeal is founded and the appellant has failed to comply with a request that he furnish such particulars;
- (b) the appellant has failed to comply with a request for information as to the counsel by whom he will be represented;
- (c) the appellant has failed to comply with a request for an expression of his intentions as to the abandonment of an appeal under section 24; or
- (d) other circumstances exist from which the Board may conclude that the appeal has been abandoned.

26. The expense of procuring the attendance of any witness to give evidence before the Board shall, unless the Chairman or presiding member otherwise directs, be borne by Her Majesty.

27. In cases not otherwise provided for, services of any notice or other document provided for in these rules may be effected

- (a) upon Her Majesty, by delivery to the Judge Advocate General; and
- (b) upon the appellant,
 - (i) by personal service, or by registered mail addressed to him at the address for service given in his statement of appeal, and
 - (ii) by registered mail or delivery to the barrister or advocate, if any, representing him on the appeal.

28. The Chairman may from time to time designate any other member of the Board to exercise any power or perform any duty or function which by these rules are to be exercised or performed by the Chairman.

Duties of the Registrar

29. The Registrar shall perform such duties as may be required of him under these rules or assigned to him from time to time by the Chairman or a presiding member and, without restricting the generality of the foregoing, shall

- (a) receive and file all papers, documents and exhibits transmitted to him in connection with appeals;
- (b) enter in an appropriate book, provided for that purpose, a list of appeals set down for hearing by the Board;
- (c) transmit to each member of the Board, before whom a particular appeal is to be heard, a copy of the statement of appeal and of the minutes of the proceedings of the court martial in respect of which the appeal is taken;
- (d) attend with all relevant records, exhibits and papers at hearings of the Board;
- (e) keep a full and correct record of all proceedings before the Board showing the names of the members of the Board present, the date, the names of the repre-

- sentative of Her Majesty and of counsel for the appellant, if any, the result of the appeal, the judgment given and the time occupied in the hearing;
- (f) cause a transcript of all new evidence to be taken by a suitably qualified court reporter;
 - (g) sign all orders made by the Board at which he attends as Registrar;
 - (h) transmit to the parties and to the Judge Advocate General the judgment of the Board and return to the Judge Advocate General the original minutes of the proceedings of the court martial;
 - (i) retain possession of all other papers, documents and exhibits unless otherwise required by the Chairman; and
 - (j) where the appellant has entered an appeal to the Supreme Court of Canada, transmit all papers, documents and exhibits required by that Court to the Registrar of that Court.

30. Failure to comply with these rules shall not necessarily render any proceedings void but, in any such case, the Chairman or the presiding member may vary the proceedings, set them aside as irregular or otherwise deal with them as may be just.

(G) (PC 1954-2067 of 8 Dec 54)

(8 Dec 54)

APPENDIX XV

**ORDER IN COUNCIL RELATING TO THE PAYMENT OF DEFENCE
COUNSEL FOR ACCUSED PERSONS
P.C. 88/2047**

Certified to be a true copy of a Minute of a Meeting of the Treasury Board, approved by
His Excellency the Governor General in Council, on the 7th May, 1948.

NATIONAL DEFENCE

The Board had under consideration the following memorandum from the Honourable the Minister of National Defence:

"The undersigned has the honour to state that the Chief of the Naval Staff, the Chief of the General Staff and the Chief of the Air Staff report that:—

- (a) It is a fundamental principle of British Justice that a person accused of a criminal offence should, at his trial, be represented by counsel and in civilian trials, when the accused is not so represented, the court may and normally will arrange for counsel to defend the accused.
- (b) Courts Martial held in the armed services may try offences of the same gravity and award punishments of the same severity as superior courts of criminal jurisdiction. An accused person at a court martial may employ civilian counsel at his own expense. If civilian counsel is not employed a serving officer may be assigned by the authority convening the court, to assist in the accused's defence, if requested by him. In the Canadian Forces there are very few serving officers with legal training who can be made available for this purpose and in most cases it is necessary for the convening authority to assign an officer who has had no legal training. This is obviously unfair to an accused who is charged with a serious offence, particularly when the prosecution is conducted by a legally-trained officer.
- (c) It is considered that an accused person at a court martial in which serious charges are involved should be defended by a legally qualified person and that if the accused's financial position is such as to preclude his employing a civilian lawyer and no legally qualified serving officer is available to act as defending officer, civilian counsel should be employed at the expense of the Crown.
- (d) A scheme has been instituted in the United Kingdom whereby an accused person at a court martial may be provided with civilian legal aid at Government expense, if such person is not in a position to pay for such aid. Such assistance is available to all ranks, subject to an examination of the financial circumstances of the accused and to the approval, in each case, of the Judge Advocate General's Office. Assistance is provided only if it is considered necessary because the prosecutor is legally qualified or the trial involves points of legal difficulty and the outcome of the trial may be of serious consequence to the accused. The expense involved in connection with the employment of civilian counsel, under such circumstances, is borne initially by the Crown, subject to an undertaking by the accused to repay whatever sum is due from him, according to a regulated scale based on his income, means and commitments.
- (e) There are, on the Reserves of the three Services many legally qualified officers who have had considerable experience in court martial work. It is considered that such officers, if available, might be employed as defending officers at courts martial and that they should be compensated on such basis as is approved by the Minister of National Defence, with the concurrence of the Minister of Justice.

2. The Deputy Minister of National Defence therefore recommends:—

- (a) That authority be granted for the employment of officers from the Reserves of the Naval, Military and Air Forces of Canada, whose civil avocation is that of barrister, advocate or solicitor, at the expense of the Crown, for the defence of accused persons before courts martial in the Naval, Military and Air Forces of Canada, in cases in which:—
- (i) the charges are of a serious nature and the outcome of the trial may be of serious consequence to the accused; and
 - (ii) the prosecution is to be conducted by a legally qualified officer or the trial involves points of legal difficulty; and
 - (iii) the accused is not in a financial position to employ civilian counsel at his own expense; and
 - (iv) the accused undertakes to repay to the Crown such part (if any) of the costs involved, as may be fixed by regulations to be approved by the Minister; and
 - (v) the Judge Advocate General, or such officer as he may appoint for that purpose, certifies that in his opinion legal aid should be furnished to the accused.
- (b) The fees to be paid to legally qualified reserve officers for their services shall be fixed by the Minister of National Defence, with the concurrence of the Minister of Justice.

3. It is impossible to estimate the cost of this proposal. It is not anticipated that, under peace-time conditions, many serious charges will be dealt with by courts martial and that any great expense will be involved.

4. The undersigned concurs in the recommendation of the Deputy Minister and has the honour to recommend that the same be approved."

The Board concur in the above report and recommendation, and submit the same for favourable consideration.

(NOTE: See G.O. 111.60/2 - "Employment of Defence Counsel at Courts Martial")

"AL 27" (21 Mar. 56)

PART I

General Regulations

(1) In any case wherein civilian counsel is employed pursuant to Order in Council PC 88/2047, dated 7 May, 1948, to conduct the defence of an officer or man of the Naval Forces tried by court-martial, the amount to be assessed against such officer or man shall not exceed for:

(a) Officers and Chief Petty Officers 1st Class	50%
(b) Chief Petty Officers 2nd Class	35%
(c) Petty Officers 1st and 2nd Class	30%
(d) Men below Petty Officer 2nd Class	25%

of the total fees incurred.

(2) The amount determined as recoverable from an officer or man shall be a debt due to the Crown and may be recovered by deductions from the pay of the officer or man.

(3) Counsel employed pursuant to these regulations shall be deemed to be acting as if he was an agent of the Minister of Justice and his account will be submitted and taxed in accordance with the fees allowed an agent of the Minister of Justice as shown in Part II hereof.

PART II

Instructions to Agents

(4) Accounts of agents for professional services are taxed by the Deputy Minister of Justice whose taxation is not appealable. This is the basis on which all work is entrusted to an agent.

(5) All copies of an agent's account shall bear the following certificate signed by the agent:

"I HEREBY CERTIFY THAT I RENDERED THE SERVICES INDICATED ABOVE AND THAT THIS ACCOUNT TRULY SHOWS THE NATURE OF THE SERVICES, THE TIME OCCUPIED, THE FEES CLAIMED, DISBURSEMENTS MADE AND ALL MONEYS RECEIVED BY ME IN THE MATTER.

.....
(Signature of Agent)

(6) (a) An agent shall submit his account *itemized and in triplicate*. Fees and disbursements shall be in separate columns opposite the items to which they refer and added up separately at the foot of each page. Counsel fees shall be placed in the fee column.

(b) When fees are charged for conferences, interviews or attendances, or at trials and appeals, *the time* actually occupied shall be stated.

(c) Communications from agents shall be addressed to the Judge Advocate General, Militia Stores Bldg., Ottawa, Ontario.

(7) Agents are requested to note carefully the following in connection with the preparation of their accounts:

(a) all accounts shall show in detail the nature of the services rendered;

(P.S. No. Gen. 1/51)

- (b) accounts not itemized will not be considered;
- (c) the time occupied in preparation, interviews, attendances in court or elsewhere shall be truly stated in each such entry;
- (d) each item of an account shall be accurately dated, and such information given as will enable a taxing officer clearly to understand it.
- (8) The following tariff, which has been concurred in by the Minister of Justice, shall apply:
 - (a) No fee shall be allowed for receiving instructions, perusing letters, typing brief or copies of pleadings, revising or advising on pleadings or documents drafted by an agent, or for preparing agent's bill of costs.
 - (b) Ordinary attendance or letters \$1.00
 - (c) The actual time engaged each day in preparation of case or in attendance on interview or conferences with police officers, departmental officials, magistrates, witnesses or others and in court shall be stated in each such entry \$5.00 per hour.
 - (d) Attendance in court on adjournments (not exceeding one hour) \$5.00
 - (e) Counsel fee—\$75.00 for the first day and \$50.00 for subsequent days; \$50.00 shall be allowed for a case lasting one-half day.

(P.S. No. Gen. 1/51)

APPENDIX XVI

REGULATIONS FOR SERVICE PRISONS AND
DETENTION BARRACKS

1955

(Issued under authority of the National Defence Act)

Effective: 1 August 1955

TABLE OF CONTENTS

Chapter	Title	Page
1	INTRODUCTION.....	3
2	ORGANIZATION AND COMMITTAL.....	4
3	DUTIES AND RESPONSIBILITIES	
	Section 1—General.....	5
	Section 2—Commandant.....	5
	Section 3—Staff.....	6
	Section 4—Visiting Officer.....	7
	Section 5—Medical Officer.....	8
	Section 6—Chaplains.....	9
	Section 7—Senior Visiting Officer.....	9
4	ADMINISTRATION	
	Section 1—General.....	10
	Section 2—Accommodation.....	11
	Section 3—Visitors.....	12
	Section 4—Mail	13
	Section 5—Discharge.....	14
	Section 6—Records.....	16
5	ROUTINE AND TRAINING	
	Section 1—General.....	17
	Section 2—Progressive Stages.....	18
	Section 3—Personal Appearance.....	21
6	MISBEHAVIOUR AND RESTRAINTS	
	Section 1—Misbehaviour.....	22
	Section 2—Corrective Measures.....	23
	Section 3—Restraints.....	26
Appendix A } to Appendix R }	FORMS.....	{ 28 to 46

Regulations for Service Prisons and Detention Barracks

CHAPTER 1

INTRODUCTION

*(Approved by the Minister, 14 Feb 56)***1.01—TITLE**

This publication shall be called “Regulations for Service Prisons and Detention Barracks”.

1.02—DEFINITIONS

(1) In these regulations and in orders or instructions implementing or amplifying them, unless the context otherwise requires:

- (a) “area commander” means an officer commanding an army area;
- (b) “commandant” means the commanding officer of a service prison or detention barrack;
- (c) “guard” means a person who has been assigned duties relating to the enforcement of these regulations;
- (d) “inmate” means any person undergoing punishment in a service prison or detention barrack;
- (e) “The Queen’s Regulations” means QRCN, QR(Army) and QR(Air); and
- (f) “superior authority” means
 - (i) the officer commanding a command,
 - (ii) the area commander, or
 - (iii) any other officer designated by the Minister under QR(Army) to exercise the powers of an officer commanding a command or an area commander, under whose command a service prison or detention barrack is placed.

(2) Other words and phrases have the same meaning as in The Queen’s Regulations.

1.03—APPLICATION

(1) Subject to (2) of this article, these regulations shall apply to the places designated as service prisons and detention barracks. (*See Queen’s Regulations, article 114.41.*)

(2) These regulations shall apply as far as practical to an inmate:

- (a) in a detention room; or
- (b) admitted to a hospital or other place for the reception of sick persons.

(1.04 TO 1.99 INCLUSIVE: NOT ALLOCATED)

Regulations for Service Prisons and Detention Barracks

CHAPTER 2

ORGANIZATION AND COMMITTAL

*(Approved by the Minister, 14 Feb 56)***2.01—UNIT DETENTION ROOMS**

Article 114.41 of The Queen's Regulations provides in part:

“(4) When a committing authority considers that it is not practical to commit a service detainee to a detention barrack, he may commit him to a unit detention room for a period not in excess of thirty days, and for that purpose the unit detention room shall be a detention barrack.

NOTES

- (A) When a unit detention room becomes a detention barrack in accordance with (4) of this article, the “Regulations for Service Prisons and Detention Barracks” apply as far as practical.
- (B) A service detainee sentenced to serve more than fourteen days is normally committed to a detention barrack designated in (3) of this article.
- (C) Paragraph (4) of this article applies even when the sentence is in excess of thirty days.”.

2.02—COMMAND

The service prisons or detention barracks designated in (2) and (3) of article 114.41 of The Queen's Regulations shall be under the command of the Chief of the General Staff.

2.03—INSPECTION

The Chief of the General Staff shall appoint an officer to inspect at regular intervals service prisons and detention barracks designated in (2) and (3) of article 114.41 of The Queen's Regulations.

(2.04 TO 2.99 INCLUSIVE: NOT ALLOCATED)

Regulations for Service Prisons and Detention Barracks

CHAPTER 3

DUTIES AND RESPONSIBILITIES

*(Approved by the Minister, 14 Feb 56)**Section 1—General***3.01—GENERAL INSTRUCTIONS**

(1) No person shall:

- (a) unless permitted by these regulations or authorized by the commandant
 - (i) take or convey to or from an inmate any article or thing,
 - (ii) leave any article or thing in any place where an inmate may gain access to it,
 - (iii) buy from or sell to an inmate any article or thing,
 - (iv) communicate with any other person on a matter concerning the service prison, detention barrack, or an inmate, unless required to do so in the course of his duties,
 - (v) introduce, possess, or consume tobacco or intoxicants at a service prison or detention barrack,
 - (vi) enter the room or cell of an inmate between lights out and reveille unless accompanied by a member of the staff and then only for urgent and exceptional reasons, or
 - (vii) receive any visitor in a service prison or detention barrack;
- (b) take or receive any gratuity or other benefit from or on behalf of an inmate;
- (c) employ an inmate for personal benefit;
- (d) use any abusive, threatening, insulting, profane or other improper language towards an inmate;
- (e) strike, except in self-defence, or otherwise ill-treat an inmate; or
- (f) discuss matters concerning the service prison or detention barrack within the hearing of an inmate.

*Section 2—Commandant***3.02—POWERS OF COMMANDANT**

The commandant shall exercise the powers:

- (a) of a commanding officer, pursuant to QR(Army); and
- (b) conferred upon him by these regulations.

3.03—GENERAL RESPONSIBILITY OF THE COMMANDANT

The commandant shall be responsible to superior authority for the administration of the service prison or detention barrack in accordance with these regulations and QR(Army).

*Regulations for Service Prisons and Detention Barracks***3.04—DUTIES OF THE COMMANDANT**

The commandant shall:

- (a) inspect the service prison or detention barrack once each day;
- (b) interview an inmate as soon after his admission as practical and ensure that he understands the regulations respecting his rights and duties as an inmate;
- (c) see each inmate
 - (i) once each day during daily routine, and
 - (ii) once each week between 2300 hours and reveille;
- (d) ensure that each inmate undergoing a corrective measure of close confinement or a diet is visited not less than once every three hours by a guard and that a record is made of such visits in the Corrective Measure Inspection Record. (*See article 4.35—"Records".*);
- (e) ensure that the medical officer is informed as soon as it appears that an inmate is sick or injured;
- (f) on the recommendation of the medical officer, discontinue or modify the routine and training of an inmate who is not fit to undergo regular routine and training;
- (g) examine the sick parade register daily and ensure that the treatment prescribed for an inmate is carried out; and
- (h) co-operate with the chaplains in the proper performance of their duties at the service prison or detention barrack.

(3.05 TO 3.08 INCLUSIVE: NOT ALLOCATED)*Section 3—Staff***3.09—DUTIES OF SENIOR WARRANT OFFICER OR NON-COMMISSIONED OFFICER**

(1) The senior warrant officer or non-commissioned officer of a service prison or detention barrack shall:

- (a) frequently inspect every part of the service prison or detention barrack, especially the rooms, cells, and bedding; attend parades; supervise the routine and training; and report to the commandant any irregularity that he may observe;
- (b) parade and inspect inmates coming into or going out of the service prison or detention barrack;
- (c) detail the duties of the men under his command and inspect them when they are coming on and going off duty; and
- (d) perform such other duties as are prescribed by these regulations.

*Regulations for Service Prisons and Detention Barracks***3.10—DUTIES OF GATE-KEEPER**

The gate-keeper shall:

- (a) record in the Gate Book (*see article 4.35—“Records”*) the name of every person passing through the gate and the times of his entry and departure;
- (b) not permit any person, to enter or leave the service prison or detention barrack without authority; and
- (c) examine all articles carried into or out of the service prison or detention barrack.

(3.11 TO 3.14 INCLUSIVE: NOT ALLOCATED)***Section 4—Visiting Officer*****3.15—APPOINTMENT OF VISITING OFFICER**

- (1) The superior authority shall appoint a Visiting Officer for each service prison and detention barrack under his command.
- (2) A Visiting Officer shall be:
 - (a) an officer not below the rank of major;
 - (b) appointed for a tour of duty not exceeding one week at any one time; and
 - (c) detailed from a duty roster on a rotational basis.

3.16—VISITS BY VISITING OFFICER

- (1) The Visiting Officer shall, as far as practical, visit the service prison or detention barrack at an unscheduled time daily, except Sunday, during his tour of duty.
- (2) The times of the Visiting Officer's visits shall not be communicated in advance to the service prison or detention barrack.

3.17—DUTIES OF A VISITING OFFICER

A Visiting Officer shall:

- (a) on each visit, if practical, inspect the service prison or detention barrack to ascertain whether regulations and orders are being enforced;
- (b) interview each inmate, in private if the inmate so requests, during his week's tour of duty and ascertain whether he has any complaint to make;
- (c) make a written report (Appendix M) of his visit to the superior authority;
- (d) during the absence of the commandant, deal with misbehaviour by inmates and sign correspondence relating to inmates;
- (e) at least once during his tour of duty, inspect and initial each record required to be kept by the commandant; and
- (f) sign the Visiting Officer's Journal. (*See article 4.35—“Records”.*)

*Regulations for Service Prisons and Detention Barracks***Section 5—Medical Officer****3.18—DUTIES OF MEDICAL OFFICERS**

The medical officer attending the service prison or detention barrack shall:

- (a) as soon as practical after admission of an inmate
 - (i) read the unit medical officer's certificate (*See QR (Army) article 34.165.*),
 - (ii) examine the inmate and inform the commandant in writing of the state of his health
 - (A) certifying, that the inmate is fit to undergo the regular routine and training of the service prison or detention barrack, or
 - (B) recommending, if the inmate is unfit to undergo the regular routine and training, the extent to which routine and training should apply to him;
- (b) at regular intervals, re-examine each inmate who is unfit to undergo the regular routine and training;
- (c) at regular intervals, inspect the service prison or detention barrack; (*See QR(Army) article 29.16.*)
- (d) attend the daily sick parade;
- (e) at regular intervals, examine the routine and training and report to the commandant any matter that he considers detrimental to the health of the inmates;
- (f) examine daily each inmate undergoing the corrective measure of close confinement or a diet and certify on the Corrective Measure Inspection Record (*see article 4.35—"Records"*) that the inmate is fit to continue such penalty;
- (g) visit at least once every 24 hours an inmate restrained in a strait jacket; (*See article 6.21—"Strait Jacket".*)
- (h) examine each inmate on his discharge or transfer from the service prison or detention barrack and certify his physical and mental fitness; (*See articles 4.25 and 4.26.*) and
- (j) record in the Medical Officer's Journal (*see article 4.35—"Records"*)
 - (i) the date, time, and full details of each inspection or visit he makes, and
 - (ii) any action he takes or recommends under this article.

*Regulations for Service Prisons and Detention Barracks***Section 6—Chaplains****3.19--DUTIES OF CHAPLAINS**

A chaplain ministering to a service prison or detention barrack shall:

- (a) if practical, conduct Divine services within the service prison or detention barrack on Sundays and other customary days;
- (b) if practical, interview privately each inmate according to his religious denomination
 - (i) on admission,
 - (ii) when he is sick,
 - (iii) when he requests the interview, or
 - (iv) on any other occasion when the chaplain considers it advisable;
- (c) if practical, hold a chaplain's hour once each week;
- (d) report to the commandant any abuse or impropriety that may come to his knowledge;
- (e) record in the appropriate Chaplain's Journal (*see article 4.35—"Records"*)
 - (i) the date and time of each visit,
 - (ii) the name of each inmate interviewed, and
 - (iii) any matter that he wishes to bring to the attention of the commandant; and
- (f) confer and co-operate with the commandant to ensure that in the performance of his duties the established routine and training is not interrupted.

Section 7—Senior Visiting Officer**3.20—APPOINTMENT OF A SENIOR VISITING OFFICER**

If a commandant considers his powers under article 6.05 inadequate to deal with the alleged misconduct of an inmate, he shall report the circumstance to the superior authority who may appoint a Senior Visiting Officer, not below the rank of lieutenant-colonel, to visit the service prison or detention barrack to deal with the case. (*See article 6.04—"Powers of Senior Visiting Officer".*)

(3.21 TO 3.99 INCLUSIVE: NOT ALLOCATED)

Regulations for Service Prisons and Detention Barracks

CHAPTER 4

ADMINISTRATION

*(Approved by the Minister, 14 Feb 56)***Section 1—General****4.01—ADMISSION**

- (1) As far as practical no person shall be sent to a service prison or detention barrack for admission on a day when Sunday routine applies. *(See article 5.02—"Routine".)*
- (2) No person shall be admitted to a service prison or detention barrack unless he is:
- (a) accompanied by
 - (i) a committal order *(see QR(Army) article 114.42)*, and
 - (ii) other documents prescribed by the Chief of Staff of the service to which he belongs;
 - (b) if a man, properly dressed and in possession of
 - (i) the items of kit prescribed by the Chief of Staff of the service to which he belongs,
 - (ii) cleaning materials and personal toilet articles, and
 - (iii) a minimum of twenty-five cents for each day of his punishment up to sixty days.
- (3) The commandant shall, as soon as practical after the admission of an inmate, ensure that regulations affecting an inmate's conduct and the routine and training at the service prison or detention barrack are read and explained to him.
- (4) An inmate, on admission, shall be:
- (a) searched; *(See article 6.03—"Power of Search".)*
 - (b) medically examined; *(See article 3.18—"Duties of Medical Officers".)*
 - (c) weighed and his weight recorded; and
 - (d) fingerprinted and photographed, if required.

4.02—PROPERTY OF INMATES

- (1) The commandant shall ensure that adequate precautions are taken to safeguard the property of an inmate.
- (2) Valuable personal property, other than money *(see (8) of this article)*, shall be placed in a Personal Property Envelope (CAFB 1665) and secured in a locked vault, safe, or strong-box.
- (3) Items of kit and personal property of small value shall be stored in the pack stores in a separate bin or storage space clearly marked with the inmate's name.

*Regulations for Service Prisons and Detention Barracks***4.02—PROPERTY OF INMATES** (Cont'd)

(4) Property stored under (2) and (3) of this article shall be recorded in the Personal Property Book (*see article 4.35—"Records"*).

(5) Perishable foodstuffs received for an inmate shall be returned to the sender at the expense of the inmate or otherwise disposed of as the inmate may request.

(6) Razors shall be taken from inmates on admission and issued each day for shaving parades only.

(7) Any cigarettes an inmate may have on admission shall be stored in a safe place and issued to him for smoking parades only (*see article 5.06—"Privileges During Second Stage"*).

(8) The money that an inmate has in his possession on admission shall be placed in a cash box, which shall be locked and kept in a locked vault, safe, or strong-box. The amount shall be entered on the inmate's Cash Account Form (Appendix N) which the inmate shall sign as correct.

(9) Property held under this article shall be returned to the owner on discharge.

(4.03 AND 4.04: NOT ALLOCATED)*Section 2—Accommodation***4.05—ACCOMMODATION**

(1) As far as practical an inmate shall be provided with a room which shall be lighted, heated, ventilated, and equipped to maintain his physical and mental health. He must be able to communicate with a guard at any time.

(2) Two inmates shall not be confined alone in one room; however, the commandant may order that three or more inmates be confined in one room.

(3) When a service prison or detention barrack contains service convicts or service prisoners as well as service detainees, the service convicts and service prisoners shall be segregated in so far as practical from the service detainees.

(4) Special rooms shall be provided for the incarceration of refractory or violent inmates and for inmates undergoing the penalty of close confinement.

(5) When practical, a special medical detention room shall be provided for occupation by inmates who, although not sick enough to be admitted to hospital, are, in the opinion of the medical officer, in need of special medical observation or attention.

(6) Regulations relative to the treatment and conduct of inmates shall be posted in each room occupied by inmates.

4.06—DIVINE WORSHIP AND INTERVIEWS BY CHAPLAINS

(1) Service prisons and detention barracks shall have, where practical, facilities for divine worship and interviews by chaplains.

(2) Except as authorized by superior authority, no inmate shall leave the confines of a service prison or detention barrack for divine worship.

*Regulations for Service Prisons and Detention Barracks***4.07—FIRE PRECAUTIONS**

- (1) When a fire breaks out in a service prison or detention barrack, the preservation of life shall be the first consideration. When there is no danger of loss of life, the custody of inmates and the extinguishing of the fire shall be the next considerations.
- (2) If a building is not fireproof, the locks on the doors of rooms occupied by inmates shall be so constructed that the doors may be opened immediately from the outside without the use of a key.
- (3) Fire drills shall be held not less than once each week.
- (4) Inmates may be ordered to perform fire-fighting drills and duties. (*See QR(Army) Chapter 30.*)

4.08—KEYS

- (1) To safeguard and account for the keys of a service prison or detention barrack, the commandant shall:
 - (a) provide a secure place for the custody of keys, which can be locked when not in use;
 - (b) appoint a warrant officer or senior non-commissioned officer of each duty shift to be responsible for the safe custody of all keys;
 - (c) maintain a system of marking all keys so that they can be readily identified; and
 - (d) maintain a key control system to account for all keys.
- (2) Inmates shall not handle keys of a service prison or detention barrack.

4.09—LIBRARY

When practical a service prison or detention barrack shall have a separate library for inmates.

4.10—GUARDS ON INMATES IN HOSPITAL

The superior authority shall, at the request of the commandant, provide adequate escorts and guards to ensure the safe custody of an inmate who is admitted to a hospital or any other place for the reception of sick persons.

(4.11 TO 4.14 INCLUSIVE: NOT ALLOCATED)*Section 3—Visitors***4.15—VISITORS**

- (1) An inmate may receive visitors:
 - (a) if his conduct is good;
 - (b) at the times prescribed by the commandant;
 - (c) in a room set aside by the commandant for this purpose;
 - (d) in the presence and hearing of a guard; and
 - (e) under such other conditions as the commandant may prescribe.

*Regulations for Service Prisons and Detention Barracks***4.15—VISITORS (Cont'd)**

- (2) Subject to (3) of this article, a visitor to a service prison or detention barrack may be searched.
- (3) No female visitor shall be searched except by another female. A search of a male visitor shall be conducted in private by one guard in the presence of another guard.
- (4) A visitor may be excluded or removed from a service prison or detention barrack at the discretion of the commandant.
- (5) The commandant shall keep a Visitors' Book (*see article 4.35—"Records"*) in which he shall record:
- (a) the name and address of each visitor;
 - (b) the name of the inmate the visitor wishes to see and the visitor's relationship to him;
 - (c) the name, address, and reason for exclusion or removal of any visitor who is refused admittance to or removed from the service prison or detention barrack;
 - (d) the name and address of any visitor searched and the reason for and the result of the search; and
 - (e) any other relevant matter respecting a visitor.

4.16—OFFICIAL VISITORS

- (1) The commandant shall permit an interview between an inmate and his defending officer or counsel at any reasonable time. This interview shall not be held within the hearing of any person, and may be held within the sight of a guard.
- (2) The commandant may permit:
- (a) officers and men of the Canadian Forces;
 - (b) members of federal, provincial, or municipal police forces; and
 - (c) members of the legal profession;

to visit the service prison or detention barrack.

- (3) Except as provided in (1) of this article, an interview with an inmate shall be within the sight and hearing of a guard.

(4.17 TO 4.19 INCLUSIVE: NOT ALLOCATED)*Section 4—Mail***4.20—INMATES' MAIL**

- (1) For the purpose of this article, "mail" means letters, telegrams, parcels, and other articles delivered to, or sent by, an inmate.
- (2) An inmate shall be permitted to send and receive mail. The commandant may scrutinize all mail and withhold any item that he considers detrimental to the inmate's morale or to the good order or security of the service prison or detention barrack.

*Regulations for Service Prisons and Detention Barracks***4.20—INMATES' MAIL (Cont'd)**

- (3) When the commandant exercises his discretion under (2) of this article, he shall:
- (a) if he objects to the content of a letter or telegram written by an inmate, give the inmate an opportunity to re-write it; and
 - (b) if he decides to withhold any mail, inform the inmate and read to him any unobjectionable portion.
- (4) When a parcel addressed to an inmate is received:
- (a) it shall be opened in the presence of the inmate;
 - (b) a list shall be made of articles withheld; and
 - (c) a receipt for the articles withheld shall be given to the inmate.
- (5) The commandant shall maintain a Register of Inmates' Mail (*see article 4.35—“Records”*) in which shall be recorded:
- (a) in respect of any mail that an inmate wishes to send
 - (i) the name of the inmate,
 - (ii) the name and address of the addressee,
 - (iii) if returned to the inmate for re-writing, a brief reason for returning it, and
 - (iv) the inmate's signature;
 - (b) in respect of any mail addressed to an inmate
 - (i) the name of the inmate to whom it is addressed,
 - (ii) a brief description of the mail,
 - (iii) whether it was scrutinized,
 - (iv) if withheld after scrutiny, a brief reason for withholding it, and
 - (v) the inmate's signature.
- (6) Any mail withheld under this article shall be dealt with in accordance with article 4.02 (Property of Inmates).

(4.21 TO 4.24 INCLUSIVE: NOT ALLOCATED)*Section 5—Discharge***4.25—DISCHARGE**

- (1) No inmate shall be discharged from a service prison or detention barrack until:
- (a) he has completed his punishment; or
 - (b) the commandant receives an order from an authority mentioned in The Queen's Regulations, Chapter 114.

*Regulations for Service Prisons and Detention Barracks***4.25—DISCHARGE (Cont'd)**

(2) Subject to (1) (b) of this article, an inmate shall be deemed to have completed his punishment when the actual number of days' punishment undergone and the number of days remitted under article 5.08 (Remission of Punishment) together equal the number of days' imprisonment or detention to which the inmate was sentenced. He may be detained until 2359 hours of the day on which he completes his punishment.

(3) When the punishment of an inmate is completed on a day on which Sunday routine applies, his punishment shall be deemed to have been completed on the preceding training day.

(4) When an inmate is discharged from a service prison or detention barrack, a Certificate of Discharge (Appendix O) shall be forwarded to the commanding officer of the unit to which the inmate is to proceed.

(5) The commandant shall, if applicable, notify an inmate's commanding officer of the expected date of discharge in sufficient time to permit the commanding officer to make any necessary arrangements for his return.

(6) On discharge or transfer, an inmate shall be weighed and his weight recorded.

4.26—TRANSFER

(1) On receipt of a warrant ordering the transfer of an inmate to another service prison or detention barrack, the commandant shall:

- (a) arrange for the transfer of the inmate under escort; and
- (b) inform the inmate's commanding officer.

(2) The documents, equipment, and articles required by these regulations for the admission of inmates (*see article 4.01—"Admission"*) shall be sent with the inmate on transfer, together with:

- (a) the transfer warrant;
- (b) the medical officer's certificate (*see article 3.18—"Duties of Medical Officers"*); and
- (c) the inmate's record from the Register of Marks (*see article 4.35—"Records"*).

(3) On receipt of a warrant ordering the transfer of an inmate to a penitentiary or civil prison, the commandant shall arrange for the transfer of the inmate under escort. The following documents shall be sent with the inmate:

- (a) the original committal order;
- (b) the transfer warrant;
- (c) the medical officer's certificate (*see article 3.18—"Duties of Medical Officers"*); and
- (d) a certificate as to the number of days of remission earned. (*See Appendix P and article 3.09—"Calculation of days of Remission on Transfer".*)

*Regulations for Service Prisons and Detention Barracks***4.27—ESCAPE FROM A SERVICE PRISON OR DETENTION BARRACK**

- (1) If an inmate escapes from a service prison or detention barrack, the commandant shall:
- (a) take steps to apprehend the inmate; and
 - (b) notify
 - (i) the local civil and military police,
 - (ii) the superior authority,
 - (iii) the Command Provost Marshal,
 - (iv) the Provost Marshal (Army), and
 - (v) the inmate's commanding officer.
- (2) The superior authority, upon notification by the commandant of the escape of an inmate, shall convene a board of inquiry to inquire into the circumstances.

(4.28 TO 4.34 INCLUSIVE: NOT ALLOCATED)*Section 6—Records***4.35—RECORDS**

- (1) The commandant shall maintain:
- (a) Commandant's Journal (Appendix A);
 - (b) Medical Officer's Journal (Appendix B);
 - (c) Chaplain's Journal (Appendix C);
 - (d) Register of Inmate's Mail (Appendix D);
 - (e) Corrective Measures Book (Appendix E);
 - (f) Corrective Measure Inspection Record (Appendix F);
 - (g) Visiting Officer's Journal (Appendix G);
 - (h) Visitors' Book (Appendix H);
 - (i) Register of Inmates (Appendix I);
 - (j) Personal Property Book (Appendix J);
 - (k) Register of Marks (Appendix K); and
 - (l) Gate Book (Appendix L).
- (2) In maintaining the records mentioned in (i) of this article:
- (a) all entries shall be made as soon as practical after the event to which they relate, showing the date of the event and the date of the entry;
 - (b) all entries shall be legibly written in ink; and
 - (c) no erasures shall be made.

(4.36 TO 4.99 INCLUSIVE: NOT ALLOCATED)

Regulations for Service Prisons and Detention Barracks

CHAPTER 5

ROUTINE AND TRAINING

(Approved by the Minister, 14 Feb 56)

Section 1—General

5.01—GENERAL

- (1) The routine and training of an inmate shall require the maximum effort and the strictest discipline.
- (2) No inmate shall be required to undergo any part of the routine or training that, in the opinion of the medical officer, would be detrimental to his physical or mental health.
- (3) If the training prescribed by the Chief of the General Staff under these regulations is not interfered with, an inmate may be employed for the benefit of the Department, at cleaning and maintenance tasks within the service prison or detention barrack.
- (4) As far as practical, no inmate shall be engaged on any form of routine or training within the view of persons outside the service prison or detention barrack.

5.02—ROUTINE

- (1) Subject to any modifications authorized by the Chief of the General Staff, the daily and Sunday routine shall be in accordance with the Tables to this article.
- (2) Daily routine shall apply on all days to which Sunday routine is not applicable.
- (3) Sunday routine shall apply on all Sundays, Christmas Day, Good Friday and other days designated by the Chief of the General Staff.

TABLE "A" TO ARTICLE 5.02

<i>Hours</i>	<i>Daily Routine</i>
0600	—Reveille
0600-0730	—Shave, scrub rooms and barracks generally, clean equipment and lay out kits
0730-0800	—Breakfast
0800-1150	—Training Period
1200-1300	—Wash up, dinner
1300-1650	—Training Period
1700-1800	—Wash up, supper
1800-1830	—Shower
1830-1945	—Wash clothes, scrub equipment and perform general tasks
1945-2045	—Incidental parades and letter writing
2045-2100	—Make up beds
2100	—Lights out.

*Regulations for Service Prisons and Detention Barracks***5.02—ROUTINE (Cont'd)****TABLE "B" TO ARTICLE 5.02**

<i>Hours</i>	<i>Sunday Routine</i>
0630	—Reveille
0630-0730	—Shave, scrub rooms, and lay out kits
0730-0800	—Breakfast
0800-1000	—Divine Service, as ordered
1000-1100	—Exercise period
1200-1300	—Dinner
1300-1600	—Study, write letters, receive visitors
1600-1630	—Exercise period
1645-1800	—Supper
1800-2045	—Privileges period (as applicable)
2045-2100	—Make up beds
2100	—Lights out.

5.03—TRAINING

The training of inmates shall be as prescribed by the Chief of the General Staff.

(5.04: NOT ALLOCATED)*Section 2—Progressive Stages***5.05—PROGRESSIVE STAGES**

- (1) The punishment of detention, and the punishment of imprisonment when served in a service prison or detention barrack, shall be divided into two stages.
- (2) The first stage shall commence on the day an inmate is sentenced and shall continue until he has earned promotion by good conduct to the second stage, but shall not be less than fourteen days.
- (3) During the first stage, no inmate shall be entitled to:
 - (a) a communication period;
 - (b) a smoking period; or
 - (c) visitors, other than official visitors mentioned in article 4.16.
- (4) When an inmate is promoted to the second stage he shall, in accordance with these regulations:
 - (a) be entitled to the prescribed privileges; and
 - (b) commence to earn remission of punishment.

*Regulations for Service Prisons and Detention Barracks***5.06—PRIVILEGES DURING SECOND STAGE**

During the second stage, an inmate shall be entitled to:

- (a) communicate with other inmates for a maximum period of thirty minutes each day at the times and under the conditions prescribed by the commandant;
- (b) smoke cigarettes at the times and under the conditions prescribed by the commandant, provided that the aggregate smoking time in any one day does not exceed thirty minutes;
- (c) the use of the library; and
- (d) visitors.

5.07—SYSTEM OF MARKS

(1) The system of marks set out in this article shall be used to assess an inmate's conduct for the purpose of:

- (a) promoting him from the first stage to the second stage; and
- (b) determining the portion of his punishment that may be remitted.

(2) Except when he is under penalty, an inmate shall be entitled to earn a maximum of eight marks each day for his conduct. In awarding these marks, attention shall be paid to the inmate's industry and attention during training, his dress and deportment, and his sense of discipline.

(3) Unless the commandant orders otherwise, an inmate shall receive eight marks for each day:

- (a) between the date of imposition of the punishment and the date of his admission;
- (b) on which Sunday routine applies;
- (c) spent while on transfer from a service prison or detention barrack to another place of incarceration; and
- (d) spent in hospital, or other place for the reception of sick persons.

(4) For each day not mentioned in (3) of this article, the senior warrant officer or non-commissioned officer normally shall award the inmate's marks. He may, after consultation with the senior guard on each duty shift, award six, seven, or eight marks to an inmate. If the senior warrant officer or non-commissioned officer considers that the inmate is entitled to less than six marks, the commandant shall, in the presence of the inmate, award an appropriate mark.

(5) No inmate shall be promoted from the first stage to the second stage until he has earned 112 marks. Marks earned for promotion to the second stage shall not count for remission of punishment.

(6) Marks awarded shall be recorded daily in the Register of Marks (*see article 4.35—"Records"*).

*Regulations for Service Prisons and Detention Barracks***5.08—CALCULATION OF MARKS FOR REMISSION OF PUNISHMENT**

(1) When the total mark earned by an inmate during the second stage equals the figure calculated in accordance with (2) of this article, the number of days of his punishment then remaining are remitted.

(2) The total mark required to earn a remission of punishment shall be calculated by:

- (a) deducting the number of days spent in the first stage from the total number of days' punishment;
- (b) taking three-fifths of the remaining number of days to the next nearest whole number if a fraction is involved; and
- (c) multiplying the resulting figure by eight.

Examples:

(A) An inmate is sentenced to thirty days' detention and promoted to the second stage after fourteen days.

- (i) Deduct fourteen from thirty.
- (ii) Take three-fifths of the remaining sixteen to the nearest whole number.
- (iii) Multiply the result, ten, by eight.

The result, eighty, represents the number of marks this inmate must earn to entitle him to remission of punishment.

(B) An inmate is sentenced to ninety days' detention and is promoted to the second stage at the end of twenty days.

- (i) Deduct twenty from ninety.
- (ii) Take three-fifths of the remaining seventy to the next nearest whole number.
- (iii) Multiply the result, forty-two, by eight.

The result, three hundred and thirty-six, represents the number of marks this inmate must earn to entitle him to remission of punishment.

5.09—CALCULATION OF DAYS OF REMISSION ON TRANSFER

The number of days' remission earned by an inmate for the purpose of Appendix P (*see article 4.26—"Transfer"*) shall be calculated by dividing by eight the total marks earned in accordance with article 5.07 (System of Marks), less 112. Any fraction of a day shall be taken to the nearest whole number.

(5.10 TO 5.14 INCLUSIVE: NOT ALLOCATED)

*Regulations for Service Prisons and Detention Barracks***Section 3—Personal Appearance****5.15—PERSONAL HYGIENE**

An inmate shall maintain a high standard of personal hygiene.

5.16—DRESS

- (1) An inmate undergoing normal training routine shall, if a man, wear his service uniform. Coveralls shall be worn to protect the uniform when necessary.
- (2) Uniforms and other clothing shall at all times be kept clean, neat, and in good repair.

5.17—HAIR CUTTING

- (1) The hair of an inmate shall not be cut closer than may be necessary for health and cleanliness.
- (2) The haircut shall conform to the normal military standard.

(5.18 TO 5.99 INCLUSIVE: NOT ALLOCATED)

Regulations for Service Prisons and Detention Barracks

CHAPTER 6

MISBEHAVIOUR AND RESTRAINTS*(Approved by Order in Council P.C. 1956—566 of 12 Apr 56)***Section 1—Misbehaviour****6.01—MISBEHAVIOUR**

An inmate who offends in any way against good order and discipline commits an act of misbehaviour. Notwithstanding the generality of the foregoing, misbehaviour of an inmate includes:

- (a) disrespect to any member of the staff, visitor, or other person;
- (b) idleness, carelessness, negligence, or refusal to work;
- (c) irreverent behaviour at Divine Service;
- (d) use of blasphemous or other improper language;
- (e) indecency in language, act, or gesture;
- (f) communication or attempts at communication with another inmate or person without authority;
- (g) singing, whistling, or any unnecessary noise or disturbance;
- (h) leaving his place of duty or any room without authority;
- (i) wilful disfiguration of or damage to, or attempts at disfiguration of or damage to, any part of the service prison or detention barrack, or any articles to which he may have access;
- (j) nuisance or an attempt to commit nuisance;
- (k) possession of any article without authority;
- (l) conveyance to or reception from or an attempt to convey to or receive from any person any article without authority; or
- (m) inattention whilst performing any duty or undergoing training.

6.02—SERVICE OFFENCES BY INMATES

An inmate who commits a service offence shall be charged, dealt with, and tried pursuant to the Code of Service Discipline. (*See The Queen's Regulations, article 101.01—“Meaning of ‘Commanding Officer’ ”.*)

6.03—POWER OF SEARCH

The commandant or any member of the staff may search an inmate at any time for prohibited articles with which he may:

- (a) injure himself or others;
- (b) effect his escape; or
- (c) damage property.

(*See QR(Army) article 22.02—“Powers of Specially Appointed Personnel”.*)

*Regulations for Service Prisons and Detention Barracks***6.04—POWERS OF SENIOR VISITING OFFICER**

The Senior Visiting Officer appointed under these regulations may apply one or more of the following corrective measures:

- (a) close confinement for a period not exceeding fourteen days;
- (b) No. 1 Diet for a period not exceeding fifteen days, or No. 2 Diet for a period not exceeding forty-two days;
- (c) deprivation of any or all privileges for a period not exceeding twenty-eight days; and
- (d) forfeiture of marks earned for remission of punishment, in an amount not exceeding 224.

6.05—POWERS OF COMMANDANT AND VISITING OFFICER

(1) The commandant or a Visiting Officer appointed under these regulations may apply one or more of the following corrective measures:

- (a) close confinement for any period not exceeding three days;
- (b) No. 1 Diet for a period not exceeding three days or No. 2 diet for a period not exceeding twenty-one days;
- (c) deprivation of any or all privileges for a period not exceeding seven days; and
- (d) forfeiture of marks earned for remission of punishment, in an amount not exceeding 112.

(2) Marks forfeited under (1)(d) of this article may be restored by the commandant.

(6.06 TO 6.09 INCLUSIVE: NOT ALLOCATED)*Section 2—Corrective Measures***6.10—CORRECTIVE MEASURES—GENERAL INSTRUCTIONS**

(1) When an inmate is found or suspected of misbehaving, a Misbehaviour Report (*See Appendix Q*) shall be completed and the inmate paraded before the commandant, Senior Visiting Officer or Visiting Officer, as appropriate, who shall hear the details of the alleged misbehaviour and any explanation the inmate may offer. If the commandant, Senior Visiting Officer or Visiting Officer is satisfied that the inmate has misbehaved, he may apply such corrective measures described in these regulations as he thinks reasonable and just.

(2) When a corrective measure is applied to an inmate, the officer applying the corrective measure shall explain fully to him the effect of it.

(3) When an inmate is responsible for the loss of or damage to public property in a service prison or detention barrack, the commandant shall, in addition to any corrective measure he may apply under these regulations, report the full particulars of the loss or damage to the inmate's commanding officer so that appropriate action under chapter 38 (Liability for Public and Non-Public Property) of The Queen's Regulations may be considered.

*Regulations for Service Prisons and Detention Barracks***6.10—CORRECTIVE MEASURES—GENERAL INSTRUCTIONS (Cont'd)**

(4) The commandant shall keep a Corrective Measures Book (*see article 4.35—"Records"*) in which he shall record:

- (a) the name of the inmate;
- (b) the misbehaviour of the inmate; and
- (c) the corrective measures applied.

6.11—CORRECTIVE MEASURES

The following corrective measures may be applied in respect of misbehaviour by an inmate:

- (a) close confinement;
- (b) No. 1 Diet;
- (c) No. 2 Diet;
- (d) loss of privileges; and
- (e) forfeiture of marks earned for remission.

6.12—CLOSE CONFINEMENT

(1) When the corrective measure of close confinement is applied to an inmate, he shall be:

- (a) confined in the room or cell set apart for that purpose;
- (b) deprived of all privileges;
- (c) allowed to exercise for two periods of thirty minutes each day; and
- (d) entitled to no mark for conduct.

(2) No inmate shall undergo the corrective measure of close confinement without the concurrence of the medical officer.

6.13—No. 1 DIET

(1) No. 1 Diet when applied for a period of three days or less shall consist of fourteen ounces of bread a day and unrestricted quantities of water.

(2) No. 1 Diet when applied for more than three days shall consist, for alternate periods of three days, of:

- (a) fourteen ounces of bread a day and unrestricted quantities of water; and
- (b) the normal ration scale.

(3) No inmate shall undergo No. 1 Diet without the concurrence of the medical officer.

(4) The period during which an inmate receives the normal ration scale shall not count as part of the term of the corrective measure.

(5) At least three days shall elapse between the expiration of one term of No. 1 Diet and a further term of No. 1 Diet or No. 2 Diet in respect of one inmate. An inmate undergoing

*Regulations for Service Prisons and Detention Barracks***6.13—No. 1 DIET (Cont'd)**

No. 1 Diet shall not:

- (a) attend parades or perform drill or work tasks;
- (b) be entitled to marks for conduct;
- (c) leave his room except for two exercise periods of not less than thirty minutes each day; or
- (d) be entitled to privileges (*see article 5.06—"Privileges During Second Stage"*).

NOTE

For example, when No. 1 Diet is applied to an inmate for eight days he shall:

- (a) for the first three days be on No. 1 Diet;
- (b) for the next three days be on the normal ration scale;
- (c) for the next three days be on No. 1 Diet;
- (d) for the next three days be on the normal ration scale; and
- (e) for the next two days be on No. 1 Diet.

Thus a period of fourteen days is required to complete a term of eight days on No. 1 Diet.

6.14—No. 2 DIET

(1) No. 2 Diet when applied for a period of twenty-one days or less shall consist of:

- (a) for breakfast, seven ounces of bread and unrestricted quantities of water;
- (b) for dinner,
 - (i) porridge containing two ounces of oatmeal,
 - (ii) two ounces of peas or beans,
 - (iii) eight ounces of potatoes,
 - (iv) the normal flavouring of salt, and
 - (v) unrestricted quantities of water; and
- (c) for supper, seven ounces of bread and unrestricted quantities of water.

(2) When No. 2 Diet is applied for a period longer than twenty-one days, the inmate shall, after twenty-one days of the diet, be placed on the normal ration scale for inmates for a period of at least seven consecutive days before reverting to No. 2 Diet. A period on normal ration scale interposed in a period of No. 2 Diet in accordance with this article shall not count as part of the term of the corrective measure.

(3) No inmate shall undergo No. 2 Diet without the concurrence of the medical officer.

(4) At least seven days must elapse between the expiration of one term of No. 2 Diet and a further term of No. 1 Diet or No. 2 Diet in respect of one inmate.

(5) An inmate undergoing No. 2 Diet shall not:

- (a) perform drill, physical training, or any form of strenuous training; or
- (b) be entitled to earn more than six marks a day for conduct.

*Regulations for Service Prisons and Detention Barracks***6.14—No. 2 DIET (Cont'd)**

NOTE

For example, an inmate awarded No. 2 Diet for thirty days shall:

- (a) for the first twenty-one days be on No. 2 Diet;
- (b) for the next seven days be on the normal ration scale; and
- (c) for the next nine days be on No. 2 Diet.

6.15—LOSS OF PRIVILEGES

The corrective measure of loss of privileges shall consist of the deprivation of any or all of the privileges granted by article 5.06.

6.16—FORFEITURE OF MARKS

The corrective measure of forfeiture of marks shall consist of the deduction of a stated number of marks from an inmate's Register of Marks. (*See Appendix K.*)

(6.17 TO 6.19 INCLUSIVE: NOT ALLOCATED)***Section 3—Restraints*****6.20—RESTRAINTS—GENERAL INSTRUCTIONS**

- (1) An inmate shall be restrained only in cases of urgent necessity to prevent injury to himself or others or damage to property, except that handcuffs may be used temporarily when such additional security is customary.
- (2) No restraint shall be used as a corrective measure.
- (3) When permissible under (1) of this article, the commandant may order in writing (*See Appendix R*) the use of a restraint for any period not exceeding twenty-four hours. For a greater period, the written order of the superior authority must be obtained.
- (4) No form of restraint other than handcuffs and strait jackets shall be employed, except by order of the superior authority.
- (5) The commandant shall record on the order required by (3) of this article:
 - (a) the name of the inmate on whom the restraint is to be used;
 - (b) the form of restraint to be used;
 - (c) the date and the times the restraint is to be imposed and removed; and
 - (d) the reasons for the use of the restraint.

*Regulations for Service Prisons and Detention Barracks***6.21—STRAIT JACKET**

- (1) The commandant shall inform the medical officer when an inmate has been restrained in a strait jacket and the medical officer shall, as soon as practical, examine the inmate.
- (2) The continued use of and duration of restraint by a strait jacket shall be in the sole discretion of the medical officer.
- (3) The medical officer shall:
 - (a) visit at least twice every twenty-four hours an inmate restrained in a strait jacket; and
 - (b) record in the Medical Officer's Journal the day and the hour the restraint was applied and discontinued.

6.22—HANDCUFFS

- (1) An inmate who requires restraint by handcuffs shall normally be handcuffed with hands in front of his body.
- (2) When an inmate is exceptionally violent, the commandant may order in writing that the inmate's hands shall be handcuffed behind his back, except at meal-times and from Lights Out to Reveille.

(6.23 TO 6.99 INCLUSIVE: NOT ALLOCATED)

Appendix A to
Regulations for Service Prisons and Detention Barracks
RULINGS AND HEADINGS OF PAGES OF
COMMANDANT'S JOURNAL

COMMANDANT'S JOURNAL

[illegible]

*Appendix B to**Regulations for Service Prisons and Detention Barracks***RULINGS AND HEADINGS OF PAGES OF
MEDICAL OFFICER'S JOURNAL****MEDICAL OFFICER'S JOURNAL**

DATE	HOURL	FULL DETAILS OF INSPECTION OR VISIT	ACTION TAKEN OR RECOMMENDED	SIGNATURE

CHAPLAIN'S JOURNAL

DATE	HOUR	ENTRY	CHAPLAIN'S SIGNATURE	COMMANDANT'S INITIALS

(A) Under the heading "ENTRY" Chaplains will record the name of each inmate interviewed, and any matter which they wish to bring to the attention of the commandant.

CORRECTIVE MEASURES BOOK

No Service Prison and/or Detention Barrack at

(Location)

*Appendix E to
Regulations for Service Prisons and Detention Barracks*

[illegible]

*Appendix F to
Regulations for Service Prisons and Detention Barracks*

CORRECTIVE MEASURE INSPECTION RECORD					
Name of Inmate				Register Number	
Length and Type of Corrective Measure					
EFFECTIVE DATES			Misbehaviour		
From	To				
Special Instructions:					
TIME	DATE	MEDICAL STAFF	DUTY STAFF	COMMANDANT	REMARKS
REMARKS:					
<p>I certify that the above named inmate's corrective measure was terminated at.....hrs.....19..... for the following reason:</p> <p style="text-align: right;">..... NCO I/C SHIFT</p>					

Regulations for Service Prisons and Detention Barracks

VISITING OFFICER'S JOURNAL

DATE	TIME IN	SIGNATURE	APPOINTMENT	UNIT OR FORMATION	TIME OUT	COMMANDANT'S INITIALS

(A) This Journal will be used only by Visiting Officers appointed under article 3.15 of Regulations for Service Prisons and Detention Barracks. All other visitors will sign the Visitor's Book (*see Appendix H*).

No Service Prison and/or Detention Barrack at

(Location)

Regulations for Service Prisons and Detention Barracks

[illegible]

*Appendix J to
Regulations for Service Prisons and Detention Barracks*

PERSONAL PROPERTY RECORD

No	Service Prison and/or Detention Barrack at _____ (Location)										Register No.
DESCRIPTION OF INMATE											
Service Number	Surname	Christian Names		Ship, Unit or Station		Service					
Time and Date Admitted		Place and Date of Enrolment		Marital Status		Religion					
Height	Weight	Eyes	Hair	Complexion	Identification Marks						
Ft	Ins	Lbs.									
Next of Kin			Relationship		Address of Next of Kin						
INVENTORY OF PERSONAL PROPERTY											
Property Received on Admission						Cash on Admission					
<p>On admission, I certify that I have declared all of my personal property and that I have no smoking materials in my possession, that the regulations affecting my conduct and the routine and training at the service prison and/or detention barrack have been read and explained to me.</p>											
Signature of Inmate:						Signature of Property Custodian					
Date:						Date					
<p>On discharge, I acknowledge receipt of the property listed above and cash in the amount of \$ _____ as accounted for on my individual cash account form.</p>											
Signature of Inmate:						Signature of Property Custodian					
Date:						Date					

Appendix K to
Regulations for Service Prisons and Detention Barracks

REGISTER OF MARKS						
INMATE'S NAME				REGISTER NUMBER.....		
DATE SENTENCED.....				DATE ADMITTED.....		
PUNISHMENT.....				POSSIBLE REMISSION.....		
MARKS REQUIRED FOR REMISSION.....				EARLIEST DATE OF DISCHARGE.....		
DATE OF RELEASE W/O REMISSION.....				DATE DISCHARGED.....		
MONTH.....YEAR.....				REMISSION EARNED.....		
DAY	POSSIBLE MARKS	MARKS EARNED	TOTAL MARKS EARNED	REMARKS	SIGNATURE OF WO	COMMANDANT'S INITIALS
BROUGHT FORWARD.....						
1	8					
2	8					
3	8					
4	8					
5	8					
6	8					
7	8					
8	8					
9	8					
10	8					
11	8					
12	8					
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27	8					
28	8					
29	8					
30	8					
31	8					
CARRIED FORWARD.....						

Appendix M to
Regulations for Service Prisons and Detention Barracks

REPORT OF VISITING OFFICER

No _____ Service Prison and/or Detention Barrack at _____
(Location)

The undersigned, having performed the duty of Visiting Officer to the above-mentioned Service Prison and/or Detention Barrack for the period..... to....., reports as follows:

DAY	DATE	HOUR	INMATE POPULATION	NUMBER OF INMATES SEEN	HOW EMPLOYED (Trg, Fatigues, etc)	STATE OF:				(Excellent, Good, Fair or Poor)
						BARRACK (Gen)	CELLS	KITCHEN	RATIONS AND MEALS	
Monday										MORALE OF INMATES
Tuesday										
Wednesday										
Thursday										
Friday										
Saturday										

The following personnel were privately interviewed by the undersigned:

SERVICE NUMBER	NAME	INITIALS	UNIT	COMPLAINT

REMARKS:

CERTIFIED THAT: (a) All inmates were seen and complaints asked for on.....; (Date)
(b) All inmate records required to be kept by the commandant have been inspected and initialled.....
(Signature, Rank and Unit)

*Appendix M (reverse) to**Regulations for Service Prisons and Detention Barracks***VISITING OFFICER**

Regulations for Service Prisons and Detention Barracks article 3.17 provides:

“3.17—DUTIES OF A VISITING OFFICER

A Visiting Officer shall:

- (a) on each visit, if practical, inspect the service prison or detention barrack to ascertain whether regulations and orders are being enforced;
- (b) interview each inmate, in private if the inmate so requests, during his week's tour of duty and ascertain whether he has any complaint to make;
- (c) make a written report (*Appendix M*) of his visit to the superior authority;
- (d) during the absence of the commandant, deal with misbehaviour by inmates and sign correspondence relating to inmates;
- (e) at least once during his tour of duty, inspect and initial each record required to be kept by the commandant; and
- (f) sign the Visiting Officer's Journal. (*See article 4.35—“Records”.*)”

INMATE'S CASH ACCOUNT

42

Appendix O to

Regulations for Service Prisons and Detention Barracks

**CERTIFICATE OF DISCHARGE
FROM
A SERVICE PRISON OR DETENTION BARRACK**

The Officer Commanding

Sir,

.....having served his
(Service Number, Rank, Name)
sentence.....from.....
to....., is discharged, having earned.....
day(s) remission.

His CONDUCT and CHARACTER during that time were.....

His physical and mental health at the time of discharge:

Signed at.....this.....day of.....19.....

Regulations for Service Prisons and Detention Barracks

To the (Governor) (Warden) of.....
(Prison) (Gaol) at.....
.....

Under authority contained in.....of.....
(Authority) (Date)
the person above named is committed to your custody effective.....

He was admitted to.....(Service Prison) (Detention
Barrack) on.....
(Date)

Signed at.....this.....
day of.....19.....

(Appointment)

Appendix Q to

Regulations for Service Prisons and Detention Barracks

**SERVICE PRISON AND/OR DETENTION BARRACK
MISBEHAVIOUR REPORT**

UNIT

DATE

INMATE'S NAME

REGISTER NUMBER

ROOM NUMBER

WING NUMBER

STAGE

MISBEHAVIOUR (Who did what—when—where—how)

REPORTED BY:

WITNESS(ES)

INMATE'S PLEA:

FINDING:

CORRECTIVE MEASURE APPLIED:

DATE CORRECTIVE MEASURE APPLIED:.....
(Commandant or Visiting Officer)

*Appendix R to**Regulations for Service Prisons and Detention Barracks***FORM OF ORDER FOR INMATES TO BE PLACED
UNDER RESTRAINT**

DATE.....

INMATE'S NAME.....

(*) Describe the articles of
restraint.

REGISTER NUMBER.....is to be

(†) Insert whether in front of
or behind the body.

restrained in(*)

by the wrists(†).....

(They are in any case to be
placed in front during meals
and bedtime.)

from this hour,to

for the following reason(s):

.....
(Signature)

Commandant.....

To the Sergeant-Major }
or NCO in charge of }Articles of restraint as above ordered, were placed on.....
(Name).....at.....hrs, removed at.....hrs
(Register Number)

the.....day of.....19.....

.....
(Warrant Officer or NCO in charge)

Of.....

EVIDENCE

TABLE OF CONTENTS

FIRST DIVISION

EXPLANATORY

	PAGE
Para. 1. Objectives of court martial.....	1
" 2. Matters to be determined.....	1
" 3. Rules of evidence.....	1
" 4. Difference — judicial & non-judicial inquiries.....	1
" 5. Reasons for excluding certain evidence.....	2
" 6. Meaning of "facts in issue".....	2
" 7. Importance of charge.....	2
" 8. Charge brought must be proved.....	3
" 9. Substance only of charge need be proved.....	3
" 10. Matters peculiarly within accused's knowledge.....	3
" 11. Strongest possible assurance not essential.....	3
" 12. The nature of evidence.....	4
" 13. Relevancy and admissibility.....	4
" 14. Direct and circumstantial evidence.....	5
" 15. Illustrations — circumstantial evidence.....	5
" 16. What facts are assumed to be known.....	7
" 17. Burden of persuasion.....	7
" 18. Burden of producing evidence.....	8
" 19. Presumptions and inferences.....	8
" 20. Proof of intention.....	9
" 21. General statement of rules of evidence.....	10

SECOND DIVISION

THE MILITARY RULES OF EVIDENCE

SECTION 1 — INTRODUCTORY

Article 1. — Short Title.....	11
" 2. — Definitions.....	11
" 3. — Application of Rules.....	13
" 4. — Cases not Provided for.....	13
" 5. — Functions of Judge Advocate under Rules.....	13
" 6. — Effect of Failure to Comply with Rules.....	13

PART I — EVIDENCE AND PROOF GENERALLY

SECTION 2 — ADMISSION OF EVIDENCE GENERALLY

Article 7. — Admission of Evidence.....	13
" 8. — Necessity for Evidence.....	14

SECTION 3 — BURDEN OF PERSUASION AND REBUTTABLE PRESUMPTIONS OF LAW

Article 9. — Burden of Persuasion — General Rule.....	14
" 10. — Burden of Persuasion on Prosecutor.....	14
" 11. — Burden of Persuasion on Accused.....	14
" 12. — Burden of Producing Evidence.....	15
" 13. — Rebuttable Presumptions of Law.....	15

(Table of Contents)

Evidence

PART II — JUDICIAL NOTICE

SECTION 4 — JUDICIAL NOTICE

Article 14. — Limitation on Judicial Notice.....	16
“ 15. — Required Judicial Notice.....	16
“ 16. — Discretionary Judicial Notice.....	17
“ 17. — Judicial Notice on Request.....	18
“ 18. — Determination of Propriety of Taking Judicial Notice.....	18
“ 19. — Effect of Taking Judicial Notice.....	19

PART III — METHODS OF PROOF AND FORBIDDEN
TYPES OF EVIDENCE

SECTION 5 — CHARACTER AND SIMILAR FACTS

Article 20. — Evidence of Character and Similar Facts Not Ordinarily Admissible before Finding.....	19
“ 21. — Character Evidence.....	19
“ 22. — Evidence of Similar Facts.....	20
“ 23. — Possession of Property Obtained by Commission of Offence.....	20
“ 24. — Offences under Official Secrets Act.....	21
“ 25. — Admissibility after Finding.....	21

SECTION 6 — HEARSAY EVIDENCE

Article 26. — Hearsay Generally Excluded.....	21
“ 27. — Words as Facts in Issue.....	22
“ 28. — Words Essential to give Character to Acts that are Facts in Issue..	22
“ 29. — Words Essential to Prove Relevant Mental or Internal Physical State	23
“ 30. — Spontaneous Words in Emergency Situation.....	23
“ 31. — Complaints.....	23
“ 32. — Dying Declarations.....	24
“ 33. — Statements Made In Course of Duty by Persons since Deceased...	24
“ 34. — Declarations on Character Reputation of Accused.....	24
“ 35. — Self-Serving Evidence.....	24

SECTION 7 — CONFESSIONS OF ACCUSED PERSONS

Article 36. — Types of Confessions.....	25
“ 37. — Judicial Confession Explained.....	25
“ 38. — Effect of Judicial Confession.....	25
“ 39. — Official Confession Defined.....	25
“ 40. — Admissibility of Official Confession.....	25
“ 41. — Unofficial Confession Defined.....	26
“ 42. — Admissibility of Unofficial Confession.....	26
“ 43. — Statements in Presence of Accused.....	27
“ 44. — Evaluation of Unofficial Confession.....	27
“ 45. — Accomplice's Evidence.....	27
“ 46. — Conspirator's Evidence.....	27
“ 47. — Evidence Discovered from Inadmissible Confession.....	27
“ 48. — Self-Incrimination.....	27
“ 49. — Statements Not Treated as Confessions.....	28

SECTION 8 — OTHER KINDS OF HEARSAY EVIDENCE

Article 50. — Statements by Persons Other Than Accused Made in Judicial or Other Official Proceedings.....	28
“ 51. — Public Documents.....	29
“ 52. — Public Documents of Other Countries.....	29
“ 53. — Documents of Canadian Forces.....	29
“ 54. — Regular Entries.....	30
“ 55. — Limitations on Admission of Certain Documents.....	30

(Table of Contents)

Evidence

SECTION 8 — OTHER KINDS OF HEARSAY EVIDENCE — Continued

Article 56. — Expert Opinion as Hearsay.....	30
“ 57. — Statements in Learned Treatises.....	30
“ 58. — Statutory Declarations.....	31
“ 59. — Mode of Proving Documentary Statements and Effect of Admission.....	31
“ 60. — Kinds of Hearsay not Specifically Covered.....	31

SECTION 9 — OPINION

Article 61. — Opinion — General Rule.....	31
“ 62. — Expert Witness.....	32
“ 63. — Opinion of Expert Witness.....	32
“ 64. — Opinion Evidence of Ordinary Witness.....	32
“ 65. — Opinions of Experts and Ordinary Witnesses.....	33
“ 66. — Opinion in Comparison of Writing.....	33

SECTION 10 — EFFECT OF PUBLIC POLICY AND PRIVILEGE

Article 67. — Secrecy.....	33
“ 68. — Effect on Trial if Secrecy Precludes Disclosure.....	33
“ 69. — Decisions on Secrecy.....	33
“ 70. — Concealment of Identity of Informants.....	33
“ 71. — Governmental Privilege on Disclosure.....	34
“ 72. — Privilege — Generally.....	34
“ 73. — Privilege of Accused.....	34
“ 74. — Privilege of Spouse of Accused.....	34
“ 75. — Communications During Marriage.....	34
“ 76. — Witness — Incriminating Questions.....	34
“ 77. — Solicitor-Client Privilege.....	34
“ 78. — Penitential Privilege.....	35

PART IV — PERMITTED METHODS OF PROOF

SECTION 11 — ORAL TESTIMONY

Article 79. — Competence of Witnesses.....	35
“ 80. — Testimonial Qualification of Witness.....	36
“ 81. — Qualification of Expert Witness.....	36
“ 82. — Testimony by Graphic Media.....	36
“ 83. — Testimony of Accomplice.....	36
“ 84. — Meaning of Corroboration.....	37
“ 85. — Corroboration of Certain Offences.....	37
“ 86. — Child's Evidence.....	37

SECTION 12 — EXAMINATION OF WITNESSES

Article 87. — Order of Testimony.....	38
“ 88. — Direct Examination — General Rules.....	38
“ 89. — Direct Examination — Leading Questions.....	38
“ 90. — Hostile Witness.....	39
“ 91. — Recorded Past Recollection.....	39
“ 92. — Refreshing Memory of Witness.....	40
“ 93. — Cross-Examination — General Rules.....	40
“ 94. — Cross-Examination — Exemptions.....	41
“ 95. — Postponement of Cross-Examination.....	41
“ 96. — Re-Examination.....	41
“ 97. — Examination of Witnesses — Incriminating Questions.....	41
“ 98. — Credibility of Witness Generally.....	41
“ 99. — Credibility — Effect of Answers.....	42
“ 100. — Credibility — Use of Former Statements to Contradict.....	42
“ 101. — Credibility — General Reputation of Witness for Veracity.....	43

(Table of Contents)*Evidence*

SECTION 13 — DOCUMENTS

Article 102. — Original Documents — Explanation	43
“ 103. — Proof of Documents by Primary Evidence	43
“ 104. — Proof of Documents by Secondary Evidence	44
“ 105. — Proof of Public Documents	44
“ 106. — Proof of Regular Entries	47
“ 107. — Bankers' Books	47
“ 108. — Proof of Date, Handwriting and Signature of Documents	48
“ 109. — Proof of Execution of Attested Documents	48

SECTION 14 — REAL EVIDENCE

Article 110. — Admissibility of Real Evidence	49
“ 111. — Introduction of Real Evidence	49

SECTION 15 — FOREIGN LAW

Article 112. — Foreign Law	49
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EVIDENCE

FIRST DIVISION

EXPLANATORY

Objectives of Court Martial

1. The objective of every court martial is to determine:

First, whether the accused has committed the offence with which he is charged (or some other offence of which the court may convict him) or, in other words, whether the offence charged (or a cognate* offence) has been committed and the accused is the person or one of the persons who committed it; and

Second, if the accused is found guilty, the penalty within the maximum prescribed by law which should be imposed.

In court martial procedure these objectives are approached by separate stages and this chapter will be directed mainly to the stage which concerns the first objective.

Matters to be Determined

2. In a trial by court martial there are two classes of questions or issues, namely, questions of fact and questions of law. If the accused pleads guilty no question of fact arises, but if he pleads not guilty the court must determine:

- (a) what the facts of the case are, and
- (b) the legal consequences of those facts, i.e., whether the facts proved in evidence constitute the offence charged or some other offence of which the court may convict the accused, or do not amount to any of these.

The "rules of evidence" are the rules which regulate the mode in which questions of fact are determined for judicial purposes.

Rules of Evidence

3. The "Military Rules of Evidence" made by the Governor in Council under authority of Section 152 of the *National Defence Act* are the rules which apply to all court martial proceedings regardless of where the court is sitting. These rules are reproduced in their entirety, with explanatory notes, later in this appendix. This division merely discusses in a general way certain aspects of the rules of evidence but the rules themselves must be consulted and quoted in any given situation.

Most questions on evidence that normally arise or can be expected to arise at a court martial can be answered from particular provisions of the rules but when a case arises that is not provided for it will be determined by the law of evidence that would apply in a criminal court sitting in Ottawa.

Difference Between Judicial and Non-Judicial Inquiries

4. In all formal inquiries, both judicial and non-judicial, rules of procedure adapted to and based on experience in the field of the inquiry have been developed as a method of arriving at a decision. There is no difference in principle between the method of inquiry in judicial and in non-judicial proceedings. In either case, a person who wishes to find out whether a particular event did or did not happen tries in the first place to obtain information from persons who were present and saw what happened and, failing that, to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen.

*See section 120 of the *National Defence Act*.

Evidence

In judicial inquiries, however, the information given must, subject to certain exceptions, be on oath and be liable to be tested by cross-examination and there are certain rules of evidence which exclude from the consideration of a court martial particular classes of evidence which an ordinary inquirer would normally take into consideration. Statements or documents so excluded are said to be "not admissible as evidence" or "not evidence".

The means of proof, or evidence, usually consists of oral testimony given by witnesses under examination or of documents produced for inspection and is, therefore, commonly classified as being either oral evidence or documentary evidence. But members of a court may supplement by personal observation the knowledge derived from these sources, i.e., they may inspect for themselves anything sufficiently identified by evidence and produced in court as material to their decision or they may go to view any place the sight of which may help them to understand the evidence.

Reasons for Excluding Certain Classes of Evidence in Judicial Inquiries

5. The answer to the question why particular statements, oral or written, should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following:

- (a) it assists a court,
- (b) it secures fair play to the accused,
- (c) it protects absent persons,
- (d) it prevents waste of time.

It assists a court by concentrating their attention on the questions immediately before them and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements or documents, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight.

It secures fair play to the accused because he comes to the trial prepared to meet a specific charge and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him.

It protects absent persons against statements affecting their characters.

It prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less remotely connected.

Meaning of "facts in issue" and "facts relevant to the issue"

6. When a charge has been properly drafted it sets out the facts upon which the prosecution relies as establishing that the accused committed the offence with which he is charged. The particulars of the charge expressly or impliedly allege the essential ingredients of the offence stated in the statement of offence and these, together with the question of identity of the accused as the person who did the acts, or responsible for the omission to do them, are the facts with which the court is primarily concerned. These facts are known as "facts in issue" and are facts in issue from the very commencement of the trial. As the trial progresses, other and subsidiary facts, such as the credibility of a witness, may also require to be determined because of their effect on the determination of the facts set out in the charge. When this occurs, these other facts become "facts relevant to the issue".

Importance of Charge

7. The charge is of the utmost importance since it serves to set the primary limits of, and to provide a focal point for, the inquiry. It follows that it is also of the utmost importance in applying the general and specific rules of evidence since, as will be seen

Evidence

from an examination of those rules, one of the major tests as to whether evidence is admissible is whether that evidence tends to establish the existence or non-existence of a fact in issue. In this sense the charge may be said to be the starting point for applying the rules of evidence. The rules do not, however, concern themselves with the mechanics or considerations involved in drafting charges. The charge is fixed by the commanding officer and approved by the convening authority before the commencement of the court and the rules of evidence presume that there is a properly drafted charge before the court.

Charge Brought Must be Proved

8. What must be proved, in order to obtain a conviction, is the particulars of the charge brought. As a general rule, every charge alleges one specific offence constituting a breach of a specific enactment; and, subject to certain exceptions, it is of this offence and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared.

The exceptions will be found not to conflict with this reason, since they relate to cases where the distinction is one of degree, but not of kind, and the accused, having been charged with the more serious, is allowed, by section 120 of the *National Defence Act*, to be convicted of the less serious offence.

Substance Only of Charge Need be Proved

9. It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence and which may be omitted without affecting the validity of the charge do not require proof and may be rejected as surplusage. In some cases, as in charges against a sentry arising out of misbehaviour on his post, the time or place of the offence is material; but in many cases it is not material. Where a court think that the facts proved differ materially from the facts alleged in the statement of the particulars, but prove the offence stated in the charge, they are empowered by QR 112.42 to record a special finding, instead of a finding of not guilty.

Matters Peculiarly Within Accused's Knowledge

10. In certain cases the subject of an allegation made by the prosecution is peculiarly within the knowledge of the accused, e.g., where the accused is alleged to have left his post without having been regularly relieved, or to have released from custody a person without proper authority, or to have absented himself without leave. In such cases the court are entitled, in the absence of any explanation from the accused justifying or excusing his conduct, to take this fact into consideration when considering the weight of the evidence adduced by the prosecution and deciding whether the accused is guilty or not. For example, when an accused is charged with absenting himself without leave, as a result of his not returning to his unit on the expiration of his leave, the prosecution cannot be expected to know or to prove why the accused did not return and, if the accused offers no explanation excusing his failure to return, the court would be justified in convicting him upon the prosecution proving that he did not in fact return to his unit on the expiration of his leave, that he was not granted an extension of leave and the date when he did return.

Strongest Possible Assurance not Essential

11. As a matter of common sense the most convincing or the best evidence available to prove a fact should be presented but this does not require the strongest possible assurance; in other words, this does not require the fullest proof of which the case will admit, nor the repetition of evidence beyond that which is sufficient to establish the fact.

For instance, it is not necessary in order to prove hand-writing to call the writer himself; nor, if a whole unit should be present at some overt act of mutiny or insubordination, such as the striking of a commanding officer in front of his unit, would the law require the

Evidence

production of all the persons present; for if one witness only were produced, and if, from his situation at the moment of the occurrence, he had as favourable an opportunity of observing what took place as any person present, his evidence would be complete, and not inferior in kind to any that could be produced.

The Nature of Evidence

12. In the conduct of our daily affairs we are continually forming judgments and arriving at conclusions based on matters which we have perceived through our senses. All the information which each of us consider in reaching a decision is assessed consciously or unconsciously in the light of our own background, experience, belief and knowledge of human nature and the ways of the world. In a sense, all the various bits of information which contribute in any way to our decision are evidence, but the decision may have been made or greatly influenced by our senses either alone or in conjunction with our power of reasoning. The law of evidence precludes a court from taking into consideration information affecting the senses only and admits only those matters which can be regarded as having a legitimate influence upon reason in a significant degree. The term "evidence" is therefore defined as "anything which has a significant rational tendency to make something manifest". However, in legal proceedings not all that is evidence by this definition is admissible, i.e., can be accepted and considered by the court in arriving at its decision. Information which is evidence under the definition must be related to the matter which the court is considering in the charge before it can be admitted by the court and in some cases, even if it complies with these conditions, the rules, for one or more of the reasons given in paragraph 5, prohibit the court admitting it. The court may only consider evidence that complies with the rules and any matter which does comply with the rules is said to be "admissible in evidence" and when admitted is sometimes spoken of as "the evidence" in a particular case or on a particular issue.

Relevancy and Admissibility

13. The basic concept on which the whole law of evidence depends is that of relevancy, and the general principle of admissibility is that, subject to important exceptions, any relevant evidence is admissible. While, due to exceptions, not all relevant evidence is admissible, irrelevance alone is always sufficient reason for the exclusion of an item of evidence.

The term "relevance" does not take its definition from the law but is rather a concept of reason, learning and experience. The law simply adopts and uses the idea of relevance as a general criterion for the admissibility of evidence in legal proceedings. "The determination of whether a particular fact is relevant in the sense in which the word is here employed is dependent on man's knowledge of historical relationships, a knowledge which includes the primitive sense of inarticulate common sense as well as the formulated propositions of organized science".¹ The word "relevant" has also been said to mean "that any two facts are so related to each other that according to the common course of events, either taken by itself or in connection with other facts, proves or renders probable the past, present or future existence or non-existence of the other."²

Everyone to a greater or lesser degree has, as a matter of common sense and experience, a sense of relevance. While this sense may be specially developed in certain fields and the law takes advantage of these skills in permitting the use of experts, the common sense of the layman must operate throughout and where experts differ, the layman must choose between them. In the matter of relevance the judge or lawyer is largely a layman though he does become to a significant degree a general expert on relevance itself because of his special knowledge of what the substantive law requires to be proved in a given case and because of continuing experience in a great variety of cases. Hence it is usually better for the court to entrust the judge advocate, if one has been appointed, with the power and duty of deciding those issues respecting the admission or exclusion of evidence with which the judge advocate may deal in accordance with Queen's Regulations.

¹ & ² — Montrose — Basic Concepts of Evidence — 70 LQR 527 at 537-38.

Evidence

If evidence is related to a fact in issue at the trial or tends to establish the cogency or accuracy of other admissible evidence, it is relevant evidence and normally admissible.

The concept of relevancy in respect of evidence must then in its practical application be directed to the charge which the court has to try or the subsidiary questions indirectly related to the charge which as a matter of reason are necessary to the determination of the basic matters in the charge.

If a member of a court martial is in doubt whether a statement or document which it is proposed to put before him is, or is not, admissible as evidence, the most useful advice that can be given to him is, first to use his common sense as to whether the matter proposed to be proved has any practical bearing on the question which he has to try, and, if he thinks that it has, then to consider whether it falls within any one of the negative or exclusive rules of law to which reference has been made above and which are more fully dealt with in the Military Rules of Evidence.

Direct and Circumstantial Evidence

14. In a trial the court are seeking to determine as questions of fact whether the accused did, or omitted to do, the acts alleged in the particulars of the charge. In the interest of economy of time and fairness to the accused, the area within which evidence may be adduced is confined to these facts and subsidiary facts related to them. The relationship of the evidence to these facts must be such that the evidence must tend directly or indirectly to prove to reason that the facts exist or do not exist. Evidence which tends to prove directly that a fact does or does not exist, such as for example when the charge alleges the accused discharged a weapon, evidence of a person who was present and saw the accused discharge the weapon, is direct evidence.

Evidence which does not tend to prove a fact in issue directly is nevertheless permissible if it proves a fact from which the logical inference can be drawn that the fact in issue also exists or does not exist and this is circumstantial evidence. Evidence that a shot was heard in a closed room in which the accused and a fired weapon were found immediately thereafter and there was no one else in the room, or had entered it or left it, would tend to establish indirectly but as a logical inference that the accused fired the weapon.

Direct evidence is not better than circumstantial evidence, the difference between them being one not of degree but of kind.

From the circumstances in which offences are ordinarily committed, it follows that direct evidence of their commission is not always obtainable and that in very many cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence and is in some respects superior to it; for it has become a proverb that "facts cannot lie", whilst witnesses may.

On the other hand, it must always be borne in mind that if facts cannot "lie", they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon them. Therefore, before a court finds an accused person guilty on circumstantial evidence, they must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion than that the accused was the guilty person.

Illustrations of Difference Between Good and Bad Circumstantial Evidence

15. The writer of a series of papers on the value and danger of circumstantial evidence, which appeared in 1879 in a legal paper,¹ states one of the leading rules with respect to this class of evidence as follows: "The facts on which it is sought to found the inference of

¹ The Law Journal, 11th October, 1879.

Evidence

guilt must be visibly and evidently connected with the crime"—and illustrates the rule by contrasting two groups of facts, of which the first would not, whilst the second would, constitute convincing circumstantial evidence of a crime. The characteristic difference between good and bad circumstantial evidence cannot be better explained than by quoting the passage which contained this illustration:

"In one of the works on evidence there is an admirable example of a series of circumstances such as are intended to be excluded by this rule, which we take the liberty of epitomising:

"1. The accused was a man of bad general character.

"2. He belonged to a nation characteristically regardless of human life.

"3. He narrowly escaped conviction on a charge of murder some years before.

"4. There is a strong ill-feeling between his nation and that of the deceased.

"5. He was heard to make exclamations in his sleep indicating a consciousness of having committed some terrible deed.

"6. The deceased was robbed, and the accused is proved to be notoriously greedy about money.

"It is scarcely necessary to say that, if a series of such circumstances were indefinitely accumulated, it would fail to produce in a sane mind a conviction that the accused was guilty. There is no visible *ligamen* between these facts and the facts sought to be established that the accused committed the murder, as all the facts are perfectly consistent with innocence. Contrast such circumstances with such as ordinarily present themselves in strong cases of circumstantial evidence. Let us take, for instance, the following series of facts:

"1. The deceased was found apparently murdered by a pistol bullet, which penetrated the skull.

"2. On the ground near the body was found a small fragment of a newspaper, which smelled strongly of burnt powder, and led to the supposition that it had been used in separating the powder from the ball; and on the accused being arrested there was found another piece of newspaper, which corresponded minutely at the point where it was torn with that found near the body of the deceased.

"3. In a pond near the scene of the murder was found a pistol, which had evidently been only recently thrown into the water and into which the bullet fitted.

"4. The pistol was proved to have belonged to a gentleman in the neighborhood; but it also appeared that the prisoner was a servant in his employment, and that the pistol was missed the day before the murder from among several fowling pieces, pistols, powder flasks, and other articles connected with the paraphernalia of the sportsman which were arranged in a small room in the gentleman's house devoted to the purposes of sport. It was part of the prisoner's duty to keep this room and its contents in order.

"5. When asked whether he ever saw the pistol, he denied it.

"On the prisoner were found two bank notes, which were proved to have been given to the deceased in part payment for a horse sold by him to a neighbour.

"The first of these facts at once suggests suspicion against the accused. As the second and subsequent circumstances are disclosed, the suspicion becomes intensified; and, as the narrative goes on, the strong apparent connection between the facts and the crime rapidly culminates, until, even before the last of them is reached, the climax of moral certainty is attained, and the mind is forced to accept the conclusion that the accused was the perpetrator of the crime."

*Evidence****What Facts are Assumed to be Known***

16. A member of a court martial is deemed to bring with him, to the considerations of the questions which he has to try, common sense and a general knowledge of human nature and of the ways of the world, and he may rely upon his general knowledge in deciding any issues of fact raised at the trial. He is also assumed to know certain matters, upon which no proof is required, as explained in the paragraphs following, but he may not rely upon any special knowledge which he has.

There are certain matters deemed to be so generally known as not to require special proof and a court may, and in some cases must, take these matters as proved without the necessity of having evidence produced to establish them. The court is said to take judicial notice of these matters. They are what "everybody knows" and therefore not capable of being disputed reasonably and in good faith or, are known and capable of being informally ascertained as part of the knowledge which members of a court martial must necessarily have to fulfill their function as a military tribunal. The basic reason for accepting such matters is that they are so generally recognized that they are indisputable among reasonable men and it would be an infringement on the economy of time in the court process to require the introduction of evidence on them.

The matters of which the court may take judicial notice are set out in Rules 15 and 16. The court must, whether requested to do so or not, take judicial notice of the matters set out in Rule 15 such as the accession of the Sovereign, acts of parliament and legislatures of Canada, etc. The court may take judicial notice of the matters set out in Rule 16 which covers a broad field of general and service knowledge but concerns matters which may not be so readily known or ascertainable as those in Rule 15 and accordingly the court is given a discretion as to whether to take judicial notice of them.

Burden of Persuasion

17. A charge alleges that the accused has done some act or acts which constitute an offence against the *National Defence Act* but it is necessary to establish who must prove the commission of the offence to obtain a conviction. The accused is presumed innocent until proved to be guilty and the court shall not convict an accused unless persuaded beyond reasonable doubt of the truth of every essential ingredient of the charge.

The burden of proving matters is known as the burden of persuasion and, apart from the exceptions noted below, the prosecution must prove beyond reasonable doubt every essential ingredient of the charge. On certain issues of fact, such as where the accused seeks acquittal on the grounds of insanity or the statute creating the offence so provides, the accused has the burden of persuasion. Where this burden is placed on the accused it is always a statutory provision and, in the absence of such a provision in the section of the statute creating the offence, the burden is on the prosecution.

In a case where the burden of persuasion is on the defence the accused must prove that he did not do the act alleged but he does not have to prove these matters to the same degree the prosecution would have to prove them were the burden on the prosecution. When the burden is on the prosecution the prosecutor must persuade the court beyond reasonable doubt, but when the burden is on the defence the accused need persuade the court only as to the probable truth or existence of the fact the accused is required to establish to be considered to have discharged the burden. The difference in the burden of persuasion when it is on the prosecution or on the defence is then a matter of the degree of proof required to discharge or, in other words, to satisfy it. However, while this burden may be on the prosecution or the defence on any particular issue, the burden of persuasion on any case as a whole always rests on the prosecution.

It is the court's duty to assess the evidence and see if it satisfies them so that they can feel sure that when they make their finding it is the right one. When considering the evidence for the prosecution, the court must also consider the evidence (if any) for the

Evidence

defence, as for example when the accused alleges that he was acting in self-defence. The evidence for the defence may convince the court of the accused's innocence or it may merely raise a doubt in the court's mind as to his guilt. In either of these events the accused must be acquitted. On the other hand the evidence for the defence may, as it sometimes does, strengthen the case for the prosecution.

Burden of Producing Evidence

18. The burden of persuasion and where it lies having been established, it is desirable to consider next which side, the prosecution or the defence, must, unless he is to fail, produce evidence on any particular matter, since a court can act only on the evidence.

The party who has the burden of persuasion on any particular fact or matter has also the burden of producing evidence in the first instance on that matter. During the course of a trial this burden may "shift" to the other side, and from side to side, depending on the evidence which is adduced. If the party on whom the burden rests produces evidence to a point that a reasonable man would say that he had proved the matter to his satisfaction and that the court ought to accept it as proved unless evidence to the contrary is produced, the burden is said to shift to the other side to produce, if they are able, such contrary evidence. A party may shift the burden to the other side by producing evidence which is convincing to this degree or by establishing a rebuttable presumption of law in his favour.

There is no visible or other means of determining during the course of a trial whether the burden of producing evidence has shifted and a party must rely on his own assessment of the evidence which has been produced and determine for himself without assistance from the court where the burden at a given moment rests. The importance of determining where the burden rests is in the fact that if it is on you and you fail to produce evidence to the contrary, or persuade the court that the evidence already before it is not sufficient to place the burden on you, you are likely to fail, i.e., have the court decide that point against you.

Presumptions and Inferences

19. While many matters which are inferences from known facts are spoken of as presumptions, the Military Rules of Evidence define and deal with only one class of presumptions, those known as rebuttable presumptions of law. Most presumptions would be adequately and accurately described as rationally attractive inferences and arise, as does any matter proved by circumstantial evidence, on the proof of certain facts which to the most of us lead to the conclusion that another fact can be inferred from the proof of the first. However, in certain cases where either because the rational inference should be placed beyond doubt or to avoid undue waste of time, statutory provisions are made for a few offences for the court to presume a fact established when a certain other matter is proved. An example is found in 79(3) NDA which provides that a person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or the place where his duty requires him to be. The presumption thus raised is rebuttable; that is, the accused may produce evidence to establish the probability that he did not have the intention which the law presumed or that the fact which is presumed or upon which the presumption is based did not in the particular circumstances of his case exist. Presumptions of this type are known as rebuttable presumptions of law, are always statutory and the statutory provisions creating them usually employ such phrases as "until the contrary is proved", "is *prima facie* evidence", or "is evidence".

The degree of proof required to rebut a rebuttable presumption of law is the same as that required where the burden of persuasion is on the accused, that is, the accused is considered to have rebutted the presumption if he establishes through evidence the probability that the fact presumed did not exist.

Evidence

There are other matters which occur fairly frequently which have not been made the subject of statutory provision but which over the course of time courts have held to be sufficient to establish certain inferences and these inferences ought to be drawn. These are not rebuttable presumptions of law, but are inferences which due to the certainty which has grown up around them might be described as doctrines. One such doctrine with which courts martial may be concerned is that of recent possession in theft cases. If "A" is accused of stealing a purse, and the prosecution prove that immediately after its loss it was found in "A" 's possession, there is obviously a strong presumption that he stole it, and, as a matter of commonsense, not one court martial in a thousand would acquit him, if he offered no explanation which might reasonably be true. The onus of proving guilty knowledge, however, always remains upon the prosecution. The correct direction to be given to a court martial in cases of stealing, or of receiving stolen goods, where such a presumption (the doctrine of recent possession) arises, and when the circumstances of the case require it, is that, upon the prosecution establishing that the accused was in possession of the goods and that they had recently been stolen, they may, in the absence of any explanation by the accused of the way in which the goods came into his possession which might reasonably be true, find him guilty, but that if an explanation be given by the accused which raises a real doubt in their minds as to his guilt or innocence, the prosecution has not discharged the onus of proof which rests upon it, and the accused is entitled to be acquitted. The presumption of guilt arising from the possession of stolen property will, of course, vary according to the nature of the property stolen, and whether it is or is not likely to pass readily from hand to hand.

Proof of Intention

20. Another matter which arises frequently is the question of intention. Intention is not capable of positive proof, it can only be inferred. In a very few offences the statute creating the offence provides a presumption that can be drawn, such as NDA 79(3) that a person who has been absent without authority for six months or more shall unless the contrary is proved be presumed to have had the intention of not returning to his unit. In some cases the intent is inferred as a necessary conclusion from the act done; e.g., if a man knowingly uttered a forged instrument as a genuine one, the intent to defraud the person to whom he utters it is a necessary inference. However, in most cases the intention of a person when he does an act is not ascertainable by a statutory presumption, or as a matter of necessary conclusion as explained, and the inference that may be drawn on this question must be determined from the evidence on it. The evidence may consist of evidence,—

- (a) as to overt acts which in themselves lead to an inference as to the intention of the actor, and
- (b) when admissible under section 5 of the Rules of Evidence, on other matters which reveal or assist words of the actor which accompany the act and explain his state of mind, and acts of the actor similar in essential respects to the act charged and show his state of mind to be wrongful.

The inference that may be drawn from the evidence on this point must be drawn with care and with due regard to the evidence in its entirety.

Unless he acted by reason of insanity or accident it is a reasonable inference that a man intends to do the act he does and a court would be justified in drawing that inference if the evidence in its totality shows it to be a correct one.

Very often a court is concerned with not only the intent with which the actor did an act but also whether at the time he did it he then intended the consequences which resulted from that act. It might be stated as a proposition of ordinary good sense that a man is usually able to foresee the natural consequences of his act so, as a rule, it is reasonable to infer that he did foresee them and intend them. Again, while it is an inference that may be drawn, it is not one which must be drawn. If the evidence in its entirety leaves the court in a state of doubt that an accused did intend the natural and probable consequences of his act, the inference should not be drawn.

*Evidence***General Statement of the Rules of Evidence**

21. The following is in very broad terms an outline of the rules of evidence:

- (1) Except for those facts of which it has taken judicial notice, a court shall not consider a fact unless evidence of that fact has been adduced in one of the ways permitted by the rules (Rule 8).
- (2) A basic rule is that, subject to important exceptions, all relevant evidence is admissible, and the corollary to the rule, irrelevant evidence is never admissible (Rule 7).
- (3) Judicial notice may be taken of those matters authorized by the rules (Rules 14-19).
- (4) Documents, except those of an investigative character concerned with the charge and set out in Rule 55, when proved in accordance with the rules, are admissible (Rules 50-60).
- (5) Material objects (documents in only limited circumstances qualify) are admissible (Rule 110).
- (6) Evidence of the general bad character or reputation of the accused is not admissible, unless the accused introduces evidence of his good character in which event the prosecution may introduce evidence to rebut it but only in matters relevant to the charge (Rules 20 & 21).
- (7) Evidence of similar facts, i.e., acts of the accused similar to those involved in the charge, is not admissible except, in certain defined circumstances, to prove that there has been no mistake in the identity of the accused or to prove that his state of mind was wrongful (Rules 20, 22-25).
- (8) Hearsay (i.e., a statement made out of court) is not admissible (Rule 26) except:
 - (a) a statement made as part of, contemporaneously with or as a continuation of the transaction constituting the offence (Rules 28-30);
 - (b) a complaint made by a person at first opportunity after being subject to sexual attack (Rule 31);
 - (c) a declaration related to the offence charged, when the offence involves legally the death of the declarant, made prior to death by a person since deceased (Rule 32);
 - (d) a report made in the course of duty by a person since deceased (Rule 33);
 - (e) when given as character evidence under (6) above (Rule 34);
 - (f) when incriminating and made by the accused, to one not in authority, or to someone in authority and proved to have been made freely and voluntarily (Confessions — Rules 36-49); and
 - (g) in certain other circumstances such as a statement in a document, in a statutory declaration, and the quotation of an expert (Rules 50-60).
- (9) The opinion of a witness is not admissible except when it is an expert opinion given by an expert, or on a matter on which the witness is peculiarly qualified and the court is not in as good a position as the witness to form an opinion (Rules 61-66).
- (10) Any person, other than the accused (and the husband or wife of the accused in certain circumstances), who has knowledge and can testify on matters concerning the charge can be compelled to testify (Rules 79-86).
- (11) A witness must disclose what he knows of the matters affecting the charge (Rule 72) unless those matters are state secrets (Rules 67-71) or were communicated to him by the accused while the witness was:
 - (a) the wife (or husband) of the accused (Rule 74);
 - (b) the counsel, solicitor or defending officer of the accused and the matters were communicated during the course of that employment (Rule 77); or
 - (c) a clergyman or priest hearing the penitential confession of the accused (Rule 78).
- (12) The examination of a witness on oath is governed by specific rules which limit and regulate the examination to matters relevant to the enquiry (Rules 87-101).

Evidence

REGULATIONS RESPECTING THE RULES OF EVIDENCE AT TRIAL BY COURT MARTIAL

*(Approved by Order in Council 1959 — 1027 of 13 Aug 59, effective 1 Oct 59,
with additional explanatory NOTES approved by the Minister.)*

Section 1—Introductory

Short Title

- 1.** These regulations may be cited as the “Military Rules of Evidence”.

NOTES

- (A) These regulations are established under section 152 of the *National Defence Act* which, in part is as follows:
 “152. (1) Subject to this Act, the rules of evidence at a trial by court martial shall be such as are established by regulations made by the Governor in Council.
 (2) No regulation made under this section is effective until it has been published in the *Canada Gazette* and every such regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session”.
- (B) The notes to these regulations are inserted on the authority of the Minister of National Defence. They are based upon decisions of court martial appeal courts, civil courts, principles stated in legal text books and opinions of the Judge Advocate General. They should not be deviated from when they are clearly applicable.

(M)

Definitions

- 2.** (1) In these Rules, unless the context otherwise requires:
- (a) “accused” means the accused personally or counsel or a defending officer acting on behalf of the accused, but does not include an adviser acting on behalf of the accused;
 - (b) “admissible” means admissible in evidence;
 - (c) “burden of persuasion” means the burden of convincing the court of the existence or non-existence, or probable existence or non-existence, of any fact;
 - (d) “business” means every kind of business, occupation or calling, and includes the practice of a profession, and the operation of an institute and every kind of institution, whether carried on for profit or not;
 - (e) “circumstantial evidence” means evidence tending to establish the existence or non-existence of a fact that is not one of the elements of the offence charged, where the existence or non-existence of that fact reasonably leads to an inference concerning the existence or non-existence of a fact that is one of the elements of the offence charged;
 - (f) “confession” means a statement made by an accused person, whether made before or after he is accused of an offence, that is completely or partially self-incriminating with respect to the offence of which he is accused;
 - (g) “credibility” means the degree of credit the court should give to the testimony of a witness;
 - (h) “declarant” means the person who originally makes a hearsay statement;
 - (i) “direct evidence” means evidence tending directly to establish the existence or non-existence of an element of the offence charged;
 - (j) “evidence” means anything that has a significant rational tendency to make something manifest;
 - (k) “examined copy” means a copy proved to have been compared with the original and to correspond to it;

*Evidence***Definitions — Continued**

- (l) “expert witness” means a witness qualified under article 81 (Qualification as Expert Witness);
 - (m) “extra-judicial statement” means in any proceedings of a court martial a hearsay statement that has been made by a declarant, other than in the course of those proceedings or in the course of taking evidence taken on commission for that court martial, and includes:
 - (i) words, oral or written, used by him,
 - (ii) the adoption, in some way, in whole or in part, of meaningful words uttered by another person as an accurate expression of the declarant’s own observations or experience, and
 - (iii) the expression, in an intelligible manner, of the declarant’s observations or experience;
 - (n) “judicial notice” means acceptance by a court of the truth of a fact or matter without requiring the introduction of evidence to prove its truth;
 - (o) “opinion” means interpretation of, or inference concerning, the significance in some respect of a given fact;
 - (p) “ordinary witness” means a witness who testifies to facts observed or experienced by him, but who is not testifying as an expert in the matter concerned;
 - (q) “public document” includes a documentary statement made for an official purpose by a public officer acting under a duty or authority to make the statement;
 - (r) “public officer” means a person having a legal duty or authority to make official statements which duty or authority is expressly imposed by or given in a statute, regulation, or specific instruction, or implied from the nature of the office because he is an official of the Government of Canada, the government of a Canadian province, a Canadian municipality, or because he is a member of the Canadian Forces;
 - (s) “Queen’s Regulations” or “QR” means The Queen’s Regulations and Orders for the Royal Canadian Navy, The Queen’s Regulations and Orders for the Canadian Army, or The Queen’s Regulations and Orders for the Royal Canadian Air Force, as applicable;
 - (t) “real evidence” means all evidence supplied by material objects when they are offered for direct perception by the court;
 - (u) “rebuttable presumption of law” means a presumption authorized by the *National Defence Act*, the *Criminal Code* or other Act of the Parliament of Canada that upon proof of a certain fact or set of facts, another fact exists, unless evidence to the degree required by law renders its existence unlikely;
 - (v) “relevant evidence” means evidence relating to a fact in issue at the trial, and includes evidence that tends to establish the cogency or accuracy of either direct or circumstantial evidence;
 - (w) “reporting witness” means a witness who is permitted to quote an extra-judicial statement;
 - (x) “self-incriminating statement” means a statement by the accused that, if admitted in evidence and believed in whole or in part, would directly or indirectly tend to prove the accused guilty of the charge;
 - (y) “trial” means trial by court-martial.
- (2) Unless otherwise prescribed, or the context otherwise requires, words and phrases used in these Rules bear the meaning given to them in the *National Defence Act* and Queen’s Regulations.

*Evidence****Application of Rules***

3. These Rules apply to all court martial proceedings and are not affected by the territorial location of the place where the court martial is sitting.

Cases not Provided for

4. Where, in any trial, a question respecting the law of evidence arises that is not provided for in these Rules, that question shall be determined by the law of evidence, in so far as not inconsistent with these Rules, that would apply in respect of the same question before a civil court sitting in Ottawa.

Functions of Judge Advocate under Rules

5. (1) Subject to (2) of this article, when the judge advocate has the power or obligation under these Rules to determine a question, that power may be exercised or that obligation discharged only in accordance with QR 112.06 (Questions of Law where Judge Advocate Appointed).

(2) If the judge advocate is not directed by the president to hear and determine a question, or if there is no judge advocate, the court shall hear and determine the question.

NOTES

- (A) When the judge advocate has ruled that an item of evidence is admissible, his ruling is on the question of admissibility only. The determination of the cogency, weight and probative value of such an item of evidence is entirely and exclusively a matter for decision by the court. The prosecutor and the accused shall be given the opportunity to present for the consideration of the court evidence relating to the cogency, weight and probative value of that item of evidence, including all or any part of the evidence adduced before the judge advocate when sitting alone. Moreover, when a fact of significance touching the reliability of an item of evidence that has been admitted was also a preliminary fact upon which its admissibility depended, the court, in determining the main issue under the charge, is free to take a different view of the truth or significance of this fact than did the judge advocate in determining admissibility only.

(M)

Effect of Failure to Comply with Rules

6. A finding made or a sentence passed by a court martial is not invalid by reason only of deviation from or failure to comply with these Rules unless it appears that a substantial miscarriage of justice has been caused by that deviation or failure.

PART I — EVIDENCE AND PROOF GENERALLY**Section 2—Admission of Evidence Generally*****Admission of Evidence***

7. Subject to article 4 (Cases not Provided for) and except as prescribed in Part III (Methods of Proof and Forbidden Types of Evidence) and Part IV (Permitted Methods of Proof), the court shall not admit irrelevant evidence but shall admit and consider all relevant evidence.

NOTES

- (A) This article applies to all stages of the trial and all issues arising during its course.
- (B) If evidence tendered does not seem to be relevant, the person adducing it should be asked either to explain its relevance or to undertake that later evidence will show its relevance. Where the evidence consists of an object tendered as an exhibit, and its relevance is not apparent when it is tendered, it should be marked for identification purposes. It should not be accepted as an exhibit until its relevance is established. When oral evidence has been heard on the undertaking of the person adducing it that he will at a later stage show its relevance, but its relevance is not in fact later established, the court should be directed to disregard that evidence.

(M)

*Evidence****Necessity for Evidence***

8. Except for those facts of which it has taken judicial notice under Section 4 (Judicial Notice), the court shall not consider a fact unless evidence of that fact has been adduced in one of the following ways:

- (a) by the oral testimony of a witness in court pursuant to Part III (Methods of Proof and Forbidden Types of Evidence) and Part IV (Permitted Methods of Proof);
- (b) by the production and reading or inspection of documents in court pursuant to Parts III and IV;
- (c) by the inspection or viewing by the court of real evidence pursuant to Part IV;
- (d) by an admission by the prosecutor during the course of the trial of the existence of a fact, for the purpose of dispensing with proof thereof, the effect of which is to narrow the area of facts to be proved by the defence; or
- (e) by a judicial confession pursuant to article 37 (Judicial Confession Explained).

Section 3—Burden of Persuasion and Rebuttable Presumptions of Law

Burden of Persuasion — General Rule

9. Notwithstanding that the burden of persuasion is on the prosecutor or the accused, the court shall not find the accused guilty unless persuaded beyond reasonable doubt of the truth of every essential element of the charge.

Burden of Persuasion on Prosecutor

10. Subject to article 11, the prosecutor has the burden of persuading the court beyond reasonable doubt of the truth of every essential element of the charge.

Burden of Persuasion on Accused

11. (1) When the accused seeks acquittal on the ground of insanity, he has the burden of persuasion as to the existence of the type and degree of insanity necessary for acquittal (see section 126 of the *National Defence Act*).

(2) When, under the *Criminal Code* or other Act of the Parliament of Canada, the accused would, in the trial of a criminal offence before a civil court, have the burden of persuasion on a material fact other than or in addition to insanity, the accused has that burden of persuasion in a trial by court martial involving the same offence and material fact.

(3) The accused has the burden of persuasion under the *National Defence Act* when that Act so provides.

(4) When the accused has a burden of persuasion under this article, the court shall consider him to have satisfied that burden if he establishes the probable truth or existence of the material fact.

NOTES**(A) Burden of Persuasion on Accused**

The following are some of the statutory provisions that fix the accused with a burden of persuasion:

(i) *Criminal Code*, S.C. 1953-54, c. 51

"295 (1) Everyone who without lawful excuse, the proof of which lies upon him, has in his possession any instrument for house-breaking, vault-breaking or safe-breaking is guilty of an indictable offence"

"360 (2) Everyone who, without lawful authority, the proof of which lies upon him, receives, possesses, keeps, sells or delivers public stores that he knows bear a distinguishing mark is guilty of an offence."

Evidence

- (ii) *National Defence Act*, R.S.C. 1952, c. 184

"98 Every person who signs an inaccurate certificate in relation to an aircraft or aircraft material, unless he proves that he took reasonable steps to ensure that it was accurate, is guilty of an offence"

- (iii) *Opium and Narcotic Drug Act*, R.S.C. 1952, c. 201

"16 (1) If any person charged with an offence under section 6 pleads or alleges that the drug in question was required for medicinal purposes, or was prescribed for the medical treatment of a person under professional treatment by the accused, or was required for medicinal purposes in connection with his practice as a dentist or veterinary surgeon, as the case may be, the burden of proof, thereof shall be upon the person so charged". (Section 6 makes it an offence for a physician, veterinary surgeon or dentist to provide anyone with a narcotic drug except for proper curative purposes.)

- (iv) *Official Secrets Act*, R.S.C. 1952, c. 198

"4 (3) Every person who receives any secret official code word, or pass word, or sketch, plan, model, article, note, document or information, knowing, or having reasonable ground to believe, at the time when he receives it, that . . . (it) . . . is communicated to him in contravention of this Act, is guilty of an offence under this Act, unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document or information was contrary to his desire."

The foregoing extracts from statutes are merely examples.

The effect of article 11 is to incorporate by reference provisions of the *National Defence Act*, the *Criminal Code* and other Acts of the Parliament of Canada that, in prescribing offences, specify circumstances in which an accused person facing a criminal charge must prove in the first instance the probable truth of a material fact if he is to secure an acquittal on that ground. It does not matter what statutory words have been used if their substantial effect is as here described.

(M)

Burden of Producing Evidence

12. (1) The burden of producing evidence of a material fact or on an issue is in the first instance upon the party who has the burden of persuasion on that fact or issue.

(2) The burden of producing evidence of a material fact or on an issue shifts to the other party during the course of a trial when the party on whom for the time being the burden of producing evidence rests has

- (a) produced evidence that reasonable men might consider has proved the fact in issue to the extent that it is required to be proved by that party, or
- (b) established the fact in his favour by a rebuttable presumption of law under article 13.

Rebuttable Presumptions of Law

13. A rebuttable presumption of law applies in a trial when the offence to which it is applicable is in issue.

NOTES

[(A) Examples of Rebuttable Presumptions

The following are examples of rebuttable presumptions of law:

- (i) *Criminal Code*, S.C. 1953-54, c. 51

"169 (b) Evidence that a place was found to be equipped with gaming equipment or any device for concealing, removing or destroying gaming equipment is *prima facie* evidence that the place is a common gaming house or a common betting house, as the case may be."

"364 (1) In proceedings under sections 360 to 363, evidence that a person was at any time performing duties in the Canadian Forces is *prima facie* evidence that his enrolment in the Canadian Forces prior to that time was regular." (Sections 360 to 363 involve fraudulent dealings in public stores and unauthorized uses of military uniforms, medals and similar things).

- (ii) *National Defence Act*, R.S.C. 1952, c. 184

- (a) "79 (3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be."
- (b) "101 (2) For the purposes of paragraph (b) of subsection 101, [driving while impaired] where a person occupies the seat ordinarily occupied by a driver of a vehicle, he shall be deemed to have attempted to drive such vehicle, unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion."

Evidence

- (iii) *Opium and Narcotic Drug Act*, R.S.C. 1952, c. 201

"18 In any prosecution under this Act a certificate as to the analysis of any drug or drugs signed . . . by a Dominion or provincial analyst shall be *prima facie* evidence of the facts stated in such certificate . . ."

- (iv) *Official Secrets Act*, R.S.C. 1952, c. 198

"3 (3) In any proceedings against a person for an offence under this section, the fact that he has been in communication with, or attempted to communicate with, an agent of a foreign power, whether within or without Canada, is evidence that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power."

(M)

PART II — JUDICIAL NOTICE

Section 4—Judicial Notice

Limitation on Judicial Notice

14. Except as authorized by these Rules, a court shall not take judicial notice of a fact or matter.

NOTES

- (A) Although courts in arriving at a decision are authorized to use their general information and knowledge of common affairs of life that men of ordinary intelligence possess, they may not act on the private knowledge or belief of their members regarding the facts of the cases being tried or on any information acquired from sources personal and private to their own experience, including knowledge gained from evidence in a previous case.

(M)

Required Judicial Notice

15. (1) A court shall, whether or not requested to do so by the prosecutor or the accused, take judicial notice of

- (a) the accession and death of the Sovereign;
- (b) the title and sign manual of the Sovereign;
- (c) the constitution of Canada;
- (d) the Great Seal of Canada;
- (e) Acts and resolutions of the Parliament of Canada;
- (f) Acts and resolutions of the legislatures of the provinces and Territories of Canada;
- (g) the territorial limits of Canada and of the provinces of Canada;
- (h) the existence of an emergency recognized by the Government of Canada;
- (i) a service, component, or unit being on active service;
and
- (j) the status of foreign governments.

(2) A court shall, whether or not requested to do so by the prosecutor or the accused, take judicial notice of the contents of, but not of the publication or sufficiency of notification of, proclamations, orders in council, ministerial orders, warrants, letters patent, rules, regulations, or by-laws, made directly under authority of a public Act of the Parliament of Canada or of the legislature of a province of Canada, including but not limited to QR, and orders and instructions issued in writing by or on behalf of a chief of staff under QR 1.23 (Authority of Chief of Staff to Issue Orders and Instructions).

Evidence

NOTES

(A) Sections 48 and 49 of the *National Defence Act* provide:

"48. Orders made under this Act may be signified by an order, instruction or letter under the hand of any officer whom the authority who made such orders has authorized to issue orders on his behalf; and any order, instruction or letter purporting to be signed by any officer appearing therein so to be authorized is evidence of his being so authorized. 1950, c. 43, s. 48.

49. (1) All regulations and all orders and instructions issued to the Canadian Forces shall be held to be sufficiently notified to any person whom they may concern by their publication, in the manner prescribed in regulations made by the Governor in Council, in the unit or other element in which that person is serving.

(2) All regulations and all orders and instructions relating to or in any way affecting an officer or man of the reserve forces, other than an officer or man who is serving with a unit or other element, when sent to him by registered mail, addressed to his last known place of abode or business, shall be held to be sufficiently notified.

(3) Notwithstanding subsections (1) and (2), all regulations and all orders and instructions mentioned in those subsections shall be held to be sufficiently notified to any person whom they may concern by their publication in the *Canada Gazette*. 1950, c. 43, s. 49."

(M)

Discretionary Judicial Notice

16. (1) Subject to article 18 (Determination of Propriety of Taking Judicial Notice), a court may, whether or not requested to do so by the prosecutor or the accused, take judicial notice of the contents of:

- (a) law reports containing decisions, and the reasons therefor, of the Court Martial Appeal Board and appeal courts mentioned in sections 190 and 196 of the *National Defence Act*;
- (b) the *Canada Gazette*, and official gazettes of the provinces of Canada;
- (c) subject to Section 5 (Character and Similar Facts) and to proof of identity of the person named therein,
 - (i) records of findings made and sentences passed at courts martial and summary trials, but not of the evidence adduced, thereat,
 - (ii) records of the disposition made on appeals from courts martial or reviews of courts martial or petitions for new trial, and
 - (iii) subject to article 105 (Proof of Public Documents), certificates of civil courts setting forth an offence for which a person was tried, and the judgment or order of the court thereon;
- (d) official and departmental reports, forms, documents, commissions, and other papers purporting to be printed by the Queen's Printer, or by the Queen's Printer of a province of Canada; and
- (e) books and other publications, and amendments to them, that are authorized officially for military use.

(2) Subject to article 18 (Determination of Propriety of Taking Judicial Notice), a court may, whether or not requested to do so by the prosecutor or the accused, take judicial notice of:

- (a) all matters of general service knowledge;
- (b) particular facts and propositions of general knowledge that, in view of the state of commerce, industry, history, language, science or human activity, are at the time of the trial so well known in the community where the offence is alleged to have been committed that they are not the subject of reasonable dispute; and
- (c) particular facts and propositions of general knowledge, the accuracy of which is not the subject of reasonable dispute, that are capable of immediate and accurate verification by means of readily available sources.

Evidence

NOTES

- (A) Examples of facts of which members of a court may take judicial notice under (2)(a) of this article are:
- (i) the general duties, authority and obligations of officers and men, having regard to rank, appointment and status;
 - (ii) naval, army or air force customs;
 - (iii) the meaning of service technical terms;
 - (iv) when and where major military engagements were fought, but not what officers or men participated or how they conducted themselves; and
 - (v) the law and usages of war.
- (B) Examples of facts of which members of a court may take judicial notice under (2)(b) of this article are:
- (i) the so-called "ordinary course of nature", such as the fact that extremely cold weather is likely to be experienced in some localities in January and February, or the fact that gestation ordinarily lasts for a particular period of time, but not what are the particular limits for extraordinary periods of gestation;
 - (ii) the public coinage and currency;
 - (iii) the dangerous character of highway traffic, but not that a particular person is a dangerous driver; and
 - (iv) the popular meaning of words, but not the scientific or technical meaning.
- (C) Examples of facts of which members of a court may take judicial notice under (2)(c) of this article are:
- (i) the number of days in a year, a given month or that a certain day of a month was a Sunday, but not the occurrences on a particular day such as the time of sunset;
 - (ii) the differences in time in places east and west of Greenwich;
 - (iii) the meaning of scientific and technical terms, but not a peculiar meaning within a particular trade or profession; and
 - (iv) who are holders of public office.
- (D) When in doubt concerning a fact that is being considered for judicial notice under (2) of this article, members of a court may, to refresh their memory:
- (i) refer to appropriate trustworthy aids such as histories, standard dictionaries, standard almanacs, the Canada Year Book, the Canadian Law List, international treaties, and scientific records; and
 - (ii) admit evidence by persons of recognized authority on the particular subject.
- (M)

Judicial Notice on Request

17. (1) The prosecutor or the accused may request the court to rule that a fact or matter is within article 15 (Required Judicial Notice), or 16, and he shall, if requested by the court, furnish the court with information relevant to the fact or matter.

(2) The court shall give the adverse party an opportunity to oppose the granting of the request.

Determination of Propriety of Taking Judicial Notice

18. (1) When a court proposes to take or appears to be taking judicial notice of a fact or matter under article 15 (Required Judicial Notice), or 16 (Discretionary Judicial Notice), or is requested to take judicial notice of it under article 17, both prosecutor and accused have the right to submit informally evidence and argument as to the competence of the court to take, or the propriety of the court taking, judicial notice.

(2) When the court or the judge advocate raises a question as to whether judicial notice may be taken of a fact or matter under article 15 or 16, the judge advocate shall decide the question, and his decision shall be final.

(3) When determining whether to take judicial notice of a fact or matter, the members of a court and the judge advocate may consult any source of pertinent information, including a person, document or book, whether or not furnished by a party, and use the information obtained therefrom.

(4) If the information possessed by the court, regardless of source, fails to convince the judge advocate that a fact or matter is clearly within article 15 or 16, he shall rule against taking judicial notice of the fact or matter.

Evidence

NOTES

- (A) Whether or not a fact is one of which a court may with propriety take judicial notice, is a question of law and not a question of fact. Consequently, the question should be decided by the judge advocate under QR 112.06 (Questions of Law where Judge Advocate Appointed).
- (B) Careful attention should be paid to the efforts made by a party to demonstrate that a particular fact or matter is or is not appropriate for judicial notice. He may for this purpose bring to the attention of the court, informally, any information that tends to show that the truth of the fact or matter is or is not open to question. (See also Note (D) to article 16).
- (C) If judicial notice of a fact or matter is not taken, either party may formally submit evidence on the point that judicial notice would have covered.
- (M)

Effect of Taking Judicial Notice

19. (1) No evidence of a fact of which a court has taken judicial notice need be given by the party alleging its existence or truth.

(2) When a court has taken judicial notice of a fact, it is conclusively taken to be true, and no allegedly contradictory evidence is thereafter admissible.

NOTES

- (A) Although a party, before the court has taken judicial notice of a fact or matter, may proceed under article 18 to attempt to demonstrate that the particular fact or matter is not proper for judicial notice, once the court have taken judicial notice of it, its truth has been found, not merely presumed, and no evidence is afterward admissible to rebut its truth. To admit rebuttal evidence at this stage would be inconsistent with the basic principle and would defeat the purpose of taking judicial notice.
- (B) There may be a case in which judicial notice is taken of the truth of a general proposition and therefore its truth is conclusive, yet evidence is admissible not to rebut its truth but to establish that a particular thing is outside the scope of the proposition. For example, courts have taken judicial notice that a cat and dog usually will fight, but a party may prove that a particular dog is afraid of cats and will run rather than fight with one.
- (M)

PART III — METHODS OF PROOF AND FORBIDDEN
TYPES OF EVIDENCE

Section 5—Character and Similar Facts

***Evidence of Character and Similar Facts Not Ordinarily
Admissible before Finding***

20. Except as prescribed in this Section, the prosecutor shall not introduce evidence of the general bad character or reputation of the accused, or of another act or other acts of the accused similar in essential respects to the act charged.

Character Evidence

21. (1) The accused may, by cross-examination or by witnesses, introduce evidence of his good character or reputation and, if he does so, the prosecutor may similarly introduce evidence to rebut it.

- (2) A witness testifying as to the character or reputation of the accused may
 - (a) report the general reputation of the accused among those who know him or would know about him respecting traits of his character relevant to the charge; and
 - (b) state his personal opinion of the general character of the accused in respects relevant to the charge.

Evidence

(3) When a witness is testifying as to the character or reputation of the accused, he shall not give evidence of particular acts of the accused as the basis of his report or opinion of the reputation or character of the accused, but shall answer questions concerning the duration and nature of his acquaintance or association with the accused, or with others who would be likely to know the accused.

(4) Notwithstanding Sections 6 (Hearsay Evidence), 7 (Confessions of Accused Persons), 8 (Other Kinds of Hearsay Evidence), and 9 (Opinion), hearsay or opinion evidence permitted under this article is admissible.

(5) This article applies to testimony in the course of examination-in-chief, cross-examination and re-examination.

Evidence of Similar Facts

22. (1) If it has been established that the act referred to in the charge was done by someone, but the state of mind or identity of the actor is in doubt, the prosecutor may, subject to (2) and (3) of this article, introduce evidence of another act or other acts of the accused similar in essential respects to the act charged, where either or both of the following facts are in issue and the evidence tends to prove one or both of them:

- (a) that the state of mind of the accused was wrongful as charged at the material time, that is, that he did the act charged either knowingly, or with wrongful intent, motive or purpose; or
- (b) that there has been no mistake in the identity of the accused as being the person who did the act charged.

(2) When attempting to prove the charge against the accused, the prosecutor shall establish a real suspicion of the guilt of the accused on issues of state of mind or identity with evidence other than that of essentially similar acts of the accused, before he may introduce evidence of essentially similar acts of the accused.

(3) Although the prosecutor has evidence to offer within (1) and (2) of this article, the judge advocate shall exclude that evidence if he decides that its probative value is slight or that it would have an undue tendency to arouse prejudice against the accused, thereby impairing the fairness of the trial.

NOTES

- (A) The decision to admit or exclude evidence as similar facts under this Section should be made by the judge advocate. For this purpose the judge advocate alone should hear the necessary evidence and argument. The president and members of the Court should absent themselves from such a hearing (see QR 112.06 (Questions of Law where Judge Advocate Appointed (and Notes)).

(M)

Possession of Property Obtained by Commission of Offence

23. (1) Subject to (2) of this article, when a person is charged with an offence under section 105 of the *National Defence Act* of receiving or retaining in possession property obtained by the commission of a service offence, evidence may be introduced by the prosecutor to show

- (a) that property other than the property that is the subject of the charge
 - (i) was found in the possession of the accused, and
 - (ii) was stolen within twelve months before the charge was laid; and
- (b) if evidence is adduced that the property that is the subject matter of the charge was found in the possession of the accused, that the accused was, within five years before the charge was laid, convicted of an offence
 - (i) involving theft,

Evidence

- (ii) under section 105 of the *National Defence Act*,
or
- (iii) under section 296 or paragraph (b) of subsection (1) of section 298 of the *Criminal Code*,

and that evidence may be taken into consideration for the purpose of proving that the accused knew that the property forming the subject matter of the charge was unlawfully obtained.

(2) Subject to article 99 (Credibility — Effect of Answers), this article shall not apply unless the accused is given at least three days' notice in writing of the details of the matters it is intended to prove and, in respect of property other than that forming the subject of the charge, a description of that property and of the person from whom it is alleged to have been stolen.

Offences under Official Secrets Act

24. When a person is charged under section 119 of the *National Defence Act* with having committed an offence under subsection (1) of section 3 of the *Official Secrets Act*, the prosecutor may adduce evidence of that person's character.

Admissibility after Finding

25. When there has been a finding of guilty and the trial continues to determine the appropriate sentence, evidence may be submitted in accordance with paragraphs 20 and 21 of QR 112.05 (Procedure to be Followed at a Court Martial), QR 112.47 (Address as to Punishment) and QR 113.13 (Procedure to be followed at a Special General Court Martial).

Section 6—Hearsay Evidence

Hearsay Generally Excluded

26. (1) Except as provided in this Section, Section 7 (Confessions of Accused Persons), and Section 8 (Other Kinds of Hearsay Evidence), and extra-judicial statement is not admissible.

(2) Except where the declarant is an accused person whose confession is admissible under Section 7, and subject to (4) of this article, the declarant must meet the same requirements for competence and qualification respecting his extra-judicial statement that a witness must meet under Section 11 (Oral Testimony), and the credibility of the declarant may be impeached or supported in the same way as that of a witness under Section 11 in so far as this is practical.

(3) Subject to (4), (5) and (6) of this article, the reporting witness must be a competent and qualified witness within Section 11, and must personally have heard or seen the declarant make the hearsay statement in question.

(4) A witness who is a person who would be likely to know about the accused may report the reputation of the accused among those associated with him, in accordance with article 21 (Character Evidence) and article 34 (Declarations on Character Reputation of Accused).

(5) A witness may offer primary or secondary evidence of a document as permitted by Section 13 (Documents), if the documentary statement concerned is admissible under article 51 (Public Documents), 52 (Public Documents of Other Countries), 53 (Documents of Canadian Forces) or 54 (Regular Entries).

Evidence

(6) An expert witness may quote the hearsay statement of another expert as permitted by articles 56 (Expert Opinion as Hearsay) and 57 (Statements in Learned Treatises).

NOTES

- (A) For the purposes of these Rules, hearsay has been treated broadly as meaning all out-of-court statements relevant to a charge. Of these statements, some are excluded from evidence in spite of their relevance, while the others remain admissible like most other items of relevant evidence. Section 6 (Hearsay Evidence) sets out these two classes of extra-judicial statements by providing in article 26 that all such statements are inadmissible and to be excluded except such of them as can be brought within the terms of the types of such statements mentioned in articles 27 to 34 and Section 7 (Confessions of Accused Persons) and Section 8 (Other Kinds of Hearsay Evidence). In other words, articles 27 to 34 and Sections 7 and 8 contain the list of admissible type of hearsay statements.

(M)

Words as Facts in Issue

27. An extra-judicial statement is admissible and may be quoted by a reporting witness where the essential elements of the offence charged are such that the words constituting the statement might themselves be

- (a) the very means or instrument whereby the offence charged was committed,
- (b) an essential feature of the commission of the offence charged,
- (c) an indispensable preliminary to the commission of the offence charged, or
- (d) the substance of a legal defence to the offence charged.

NOTES

(A) Examples:

- (i) *Words as the very means or instrument of an offence:*
seditious or treasonable words, perjury, libel, words of agreement between collaborators in crime.
- (ii) *Words as an essential feature of the offence charged:*
words of agreement or instruction between collaborators in crime (co-conspirators), false representation used as part of a scheme to obtain money by false pretences.
- (iii) *Words constituting an indispensable preliminary to the offence charged:*
words in which a military order was given, when the charge is disobedience of that order.
- (iv) *Defences:*
words of provocation or insult, where sufficient provocation nullifies the offence charged, e.g., sufficient provocation reduces murder to manslaughter.

(M)

Words Essential to Give Character to Acts that are Facts in Issue

28. (1) For the purposes of this article, "acts" does not include the uttering of coherent words.

(2) When a person has done acts that are alleged to be criminal acts according to the charge, but their criminal character by themselves is ambiguous or doubtful, words of the actor or another person present that were substantially contemporaneous with the acts and that suggest some further inference concerning the nature or quality of the acts are, subject to (3) of this article, admissible and may be quoted by a reporting witness.

(3) The words of a declarant under (2) of this article shall not be admissible if the party to whom the statement is adverse shows that the declarant had motive and opportunity before making the hearsay statement to contrive deceitful words to his own advantage, and in the particular circumstances was likely to have done so.

NOTES

- (A) For example, the act of handing over or receiving money may be explained by words of the payer or payee as a gift or a loan or a bribe or the sharing of ill-gotten gains. Also the words of a possessor of stolen goods at the time they were found in his possession may indicate whether his possession was innocent or fraudulent.

(M)

*Evidence****Words Essential to Prove Relevant Mental or Internal Physical State***

29. (1) When the formation, occurrence or existence at some moment or during some period of a particular state of mind or internal physical condition of a person is relevant directly or indirectly to proof of the charge, words uttered by that person contemporaneously with the formation, occurrence or existence of that mental or physical state, and manifesting or implying something about the nature of it, are, subject to (2) of this article, admissible and may be quoted by a reporting witness.

(2) The words of a declarant under (1) of this article shall not be admissible if the party to whom the statement is adverse shows that the declarant had motive and opportunity before making the hearsay statement to contrive deceitful words to his own advantage, and in the particular circumstances was likely to have done so.

NOTES

- (A) For example, letters or statements may be such as to tend to show the insanity of their author. Also threats uttered by a person accused of murder or assault respecting the person killed or injured may indicate an intention at the material time on the part of the accused to kill or injure such person. Also statements by a deceased person a few days before his death that he was in good health may have some tendency to show that he did not die a natural death.

(M)

Spontaneous Words in Emergency Situation

30. Where a person has participated in or observed acts or events with which the charge in question is concerned, and these acts or events were of an exciting, startling or shocking character, words about them spoken spontaneously by the participant or observer, while he was under the influence of the original excitement or shock engendered by those acts or events, whether during or after their occurrence, are admissible and may be quoted by a reporting witness.

NOTES

- (A) An example would be the spontaneous words concerning the collision of persons involved in or observing a collision of automobiles.

(M)

Complaints

31. (1) For the purposes of this article:

- (a) "complaint" means an extra-judicial statement concerning an offence made after the alleged commission of that offence to a person other than the accused by the person in respect of whom it is alleged to have been committed; and
- (b) "complainant" means a person who has made a complaint.

(2) Subject to (3) of this article, a complaint is not admissible but the fact of a complaint having been made is admissible in respect of any offence.

(3) The details of a complaint, in so far as they relate to the charge, are admissible for the purposes of (4) of this article if

- (a) the offence charged is a sexual offence;
- (b) the complainant has given evidence at the trial; and
- (c) the prosecutor proves that the complaint was made
 - (i) at the first opportunity reasonably available after the offence was committed, and
 - (ii) spontaneously, and not elicited by leading questions, inducement or intimidation.

(4) A complaint shall not be considered as evidence of the facts complained of, but may be considered as evidence of the consistency or otherwise of the conduct of the complainant with the evidence given by the complainant.

Evidence

NOTES

- (A) The admissibility of a complaint is a matter to be decided by the judge advocate.
- (B) A complaint should be proved by calling both the complainant and the person to whom the complaint was made.
- (C) A complaint does not constitute corroboration within the meaning of article 85 (Corroboration of Certain Offences) of the complainant's evidence in such a case, and the judge advocate must so advise the court.
- (D) Where a complaint has been admitted, the judge advocate must advise the court, in accordance with (4) of this article, of the purpose for which it may be considered as evidence.
- (M)

Dying Declarations

32. The words of a deceased person whose death is the subject of the charge are admissible and may be quoted by a reporting witness if

- (a) they are concerned with the facts leading up to or attending the injurious act which resulted in the declarant's death;
- (b) they were spoken while the declarant had a settled hopeless expectation that his death was near, whether or not death did thereafter occur as or when expected; and
- (c) it appears that the declarant had completed uttering what he wished to say before death intervened.

Statements Made in Course of Duty by Persons since Deceased

33. An extra-judicial statement made during the lifetime of a declarant since deceased is, in so far as it relates to the charge, admissible and may be quoted or submitted by a reporting witness as proof of the facts which it was the duty of the declarant in the ordinary course of his business to include in that statement, if the declarant

- (a) had a personal knowledge of the facts;
- (b) had a duty to make the statement in the ordinary course of his business;
- (c) made the statement at or near the time of the act or event to which it relates; and
- (d) had no motive to misrepresent the facts.

Declarations on Character Reputation of Accused

34. When, in accordance with article 21 (Character Evidence), a witness is called at a court to testify as to the reputation of the accused respecting traits of his character relevant to the charge, the hearsay statements on this subject of other persons who had or who have some significant direct or indirect association with the accused are admissible and may be quoted by the witness.

Self-Serving Evidence

35. (1) For the purposes of this article, "self-serving evidence" means any extra-judicial statement of the accused, or evidence of any other nature manufactured, created or arranged by the accused, that tends to exonerate him of the charge.

(2) Except to the extent that it may be admissible under article 27 (Words as Facts in Issue), 28 (Words Essential to give Character to Acts that are Facts in Issue), 29 (Words Essential to Prove Relevant Mental or Internal Physical State), 30 (Spontaneous Words in Emergency Situation) or 60 (Kinds of Hearsay not Specifically Covered), and subject to the right of the accused to give evidence, self-serving evidence is not admissible when submitted by an accused.

*Evidence***Section 7—Confessions of Accused Persons*****Types of Confessions***

36. Confessions are judicial, official, or unofficial.

Judicial Confession Explained

37. When, at his trial, the accused chooses to make a complete or partial admission of incriminating facts in respect of an offence for which he is being tried, he may make a judicial confession

- (a) by pleading guilty, including pleading guilty subject to variations and exceptions, when this plea is accepted by the court under QR 112.25 (Acceptance of Plea of Guilty);
- (b) after pleading guilty, and whether or not he not also decides to testify as a witness under oath, by personally or through his counsel or defending officer admitting, for the purpose of dispensing with proof, any fact the prosecutor must prove; or
- (c) after pleading not guilty, and having elected to testify under oath as a witness in accordance with article 73 (Privilege of Accused), by making a self-incriminating statement in the course of his testimony.

Effect of Judicial Confession

38. (1) Subject to QR 112.26 (Change of Plea During Trial), when a plea of guilty has been made by the accused and accepted by the court, it is conclusive proof of guilt.

(2) If the accused, after pleading not guilty, admits, other than in the course of his own testimony, a fact alleged against him, the court may accept that admission as conclusive proof of the fact concerned.

(3) If the accused testifies on his own behalf, the court may believe or disbelieve his testimony in whole or part, including a self-incriminating statement made in the course of that testimony.

Official Confession Defined

39. An official confession is a confession made by the accused, whether or not he has been charged, or might expect to be charged, with an offence at the time of making a statement

- (a) when testifying as a legally compellable witness in the course of any judicial or other official proceeding or inquiry, civil or military, other than his own trial for the offence in question; or
- (b) in the course of giving information pursuant to regulations, or orders issued by a chief of staff under QR 1.23 (Authority for Chief of Staff to Issue Orders and Instructions), to give information required for any proper military purpose.

Admissibility of Official Confession

40. (1) Subject to (2) of this article, an official confession by the accused shall not be admissible or used in his trial for an offence in respect of which it is a confession.

(2) When the charge involves perjury, giving false or contradictory evidence, or making a false or contradictory statement, and is based upon a previous statement of the accused purporting at least in part to be an official confession, the prosecutor may introduce this previous statement in evidence.

*Evidence****Unofficial Confession Defined***

41. An unofficial confession is a self-incriminating statement made by the accused respecting the offence charged, other than a statement which is a judicial confession under article 37 (Judicial Confession Explained) or an official confession under article 39 (Official Confession Defined), and includes a statement made by the accused to civil or military police or other persons in authority as defined in paragraph (3) of article 42, whether or not in response to questions by such a person.

Admissibility of Unofficial Confession

42. (1) Subject to Section 10 (Effect of Public Policy and Privilege), a statement by the accused alleged to be an unofficial confession may be introduced in evidence by the prosecutor if he proves that

- (a) there is evidence that the accused did make the statement attributed to him; and
- (b) the statement was voluntary in the sense that it was not made by the accused when or because he was or might have been significantly under the influence of
 - (i) fear of prejudice induced by threats exercised, or
 - (ii) hope of advantage induced by promises held out, in relation to the offence in question, by a person in authority.

(2) The only inducements by way of threats or promises significant for the purpose of excluding a statement of the accused under (1) of this article are those that a reasonable man would think might have a tendency to cause an innocent accused person to make a false confession.

(3) A person in authority is one who was in a position relative to the accused at the material time to exercise or hold out inducements of the character described in (1) and (2) of this article, or was someone who might reasonably have appeared to the accused to be in such position.

(4) A person may be a person in authority within (3) of this article and possess power by military law to order the accused to answer relevant questions, and yet clearly not exercise nor purport to exercise this power in a particular case, so that a voluntary confession within (1) and (2) of this article might in some circumstances be made by the accused to such a person.

(5) A person who holds a higher service rank than the accused is not, for that reason alone, a person in authority within (3) of this article.

(6) Subject to (7) of this article, when an unofficial confession is admissible under this article, the whole of it, including any part that is exculpatory, shall be admitted.

(7) When an unofficial confession contains a statement that the accused has committed an offence other than that with which he is charged, the part of the confession relating to that other offence shall not be admitted unless it is relevant to and otherwise admissible in respect of the offence with which he is charged.

(8) The admissibility of an alleged unofficial confession tendered by the prosecutor should be determined at a hearing by the judge advocate in the absence of the court.

NOTES

- (A) If a confession has been made as a result of a threat or promise by a person in authority as explained in (2) and (3) of this article, a subsequent confession will be considered to flow from the same influence. A subsequent confession must therefore be rejected unless it appears from clear and positive evidence that the improper influence had disappeared before it was made.

(M)

*Evidence****Statements in Presence of Accused***

43. (1) When a statement has been made by another person in the presence of the accused that, if true, would incriminate the accused in whole or in part respecting the offence in question, and the statement was fully understood by the accused, then if it was also clear from the contemporaneous words, conduct or demeanour of the accused that he accepted the statement as true in whole or in part, the statement to the extent that he so accepted it may be treated as an unofficial confession made by the accused.

(2) Whether a statement described in (1) of this article should be deemed to have been fully understood and accepted by the accused as true in whole or in part is, as regards admissibility, a question for the judge advocate under (8) of article 42.

Evaluation of Unofficial Confession

44. (1) The decision as to the truth or falsity in whole or in part of an unofficial confession is exclusively a matter for the court.

(2) It is the duty of the court to consider whether an unofficial confession is to be believed or disbelieved in whole or in part in the light of its nature, the circumstances in which it was made, and other relevant and admissible evidence available.

(3) The court may convict on the basis of a complete unofficial confession alone, if it is satisfied beyond a reasonable doubt of its truth.

Accomplice's Evidence

45. Subject to article 46, where two or more persons are accused of complicity in the same offence, the confession of any one of them is admissible evidence against that one alone, and not against the others.

Conspirator's Evidence

46. (1) When two or more persons are alleged to have been parties to a common criminal plan or design, the words of one of them, apparently spoken or written as part of or in furtherance of the formation or carrying out of that plan, are admissible as evidence against the others as well as against the speaker or writer.

(2) Paragraph (1) of this article applies whether the charge alleges the conspiracy itself, or the commission of the offence planned, or the attempt to commit it, and whether an accused is charged singly, or jointly with the alleged co-conspirator whose words purport to incriminate them.

(3) The probative value of evidence admitted under (1) of this article is a matter for the court.

Evidence Discovered from Inadmissible Confession

47. Where an official or unofficial confession is inadmissible under article 40 (Admissibility of Official Confession) or 42 (Admissibility of Unofficial Confession), but has led to the discovery of other evidence of independent probative value tending to show the accused guilty as charged, that evidence may be given or produced in the usual way by prosecution witnesses, and they may also tell the court that the evidence was discovered because of information given by the accused, but there shall be no other reference to the inadmissible confession.

Self-Incrimination

48. Except as provided in these Rules, an accused person, when giving evidence, has no privilege against self-incrimination by his own statements.

*Evidence***Statements not Treated as Confessions**

49. A Statement that meets the conditions for admission in article

- 27 (Words as Facts in Issue),
- 28 (Words Essential to Give Character to Acts that are Facts in Issue),
- 29 (Words Essential to Prove Relevant Mental or Internal Physical State),
- 30 (Spontaneous Words in Emergency Situation), or
- 60 (Kinds of Hearsay not Specifically Covered)

need not also meet the requirements of this Section, though the statement is classifiable as an unofficial confession.

Section 8—Other Kinds of Hearsay Evidence**Statements by Persons Other than Accused Made in Judicial or Other Official Proceedings**

50. (1) Evidence taken on commission under section 155 of the *National Defence Act* is admissible as provided therein.

(2) When an accused person has been tried by court martial and found guilty, but a new trial on the same charge has been ordered, evidence given at the former trial by a witness other than the accused may be quoted at the new trial when proved as provided by Section 13 (Documents) if it appears that

- (a) the former witness is not available to testify at the new trial because he refuses to be sworn or to give evidence at the new trial, or he is dead, or insane, or absent from the country where the trial is being held, or so ill as to be unable to travel; and
- (b) the evidence of the former witness was given in such circumstances that the parties had full opportunity to exercise their respective rights of examination of the witness.

NOTES

(A) Section 155 of the *National Defence Act*, provides:

"155. (1) Where it appears to the Judge Advocate General, or to such person as he may appoint for that purpose,

- (a) that the attendance at a trial by court martial of a witness for the prosecution is not readily obtainable because the witness is ill or is absent from the country in which the trial is held, or that the attendance of a witness for the accused person is not readily obtainable for any reason, or
- (b) that the attendance of a witness for the prosecution at a trial by court martial in any place out of Canada is not readily obtainable and under the law of that place there is no provision for compulsory attendance of that witness at such court martial,

the Judge Advocate General, or such person as he may appoint for that purpose, may appoint any officer or other qualified person, in this section referred to as a "commissioner", to take the evidence of the witness under oath.

(2) The document containing the evidence of a witness, taken under subsection (1) and duly certified by the commissioner, is admissible in evidence at a court martial to the same extent and subject to the same objections as if the witness had given that evidence in person at the trial.

(3) Where in the opinion of the president of a court martial, a witness whose evidence has been taken on commission, should in the interests of justice appear and give evidence before the court martial and that witness is not too ill to attend the trial and is not outside the country in which the trial is held, the president may require the attendance of that witness.

(4) Repealed. R.S.C. 1952, c. 310, s. 2 (10).

(4) At any proceedings before a commissioner the accused person and the prosecutor are entitled to be represented and the persons representing them have the right to examine and cross-examine any witness.

(5) The accused person shall, at least twenty-four hours before it is admitted at the court martial be furnished without charge with a copy of the document mentioned in subsection (2). 1950, c. 43, s. 155."

(M)

*Evidence***Public Documents**

51. (1) Subject to article 55 (Limitations on Admission of Certain Documents), a public document is admissible in evidence at a court martial when relevant to the charge.

(2) The making and content of a public document may be proved in the manner provided in Section 13 (Documents) without requiring the personal appearance of the maker as a witness.

(3) A public officer making a public document need not have personally observed or experienced the facts which he records or certifies by virtue of his duty or office; it is enough if the information concerned has come to him in a manner considered reliable and usual in the discharge of his duty or the exercise of his authority, and this includes facts reported to him by his superiors, equals or subordinates or by members of his staff, when acting in the discharge of their duties or the exercise of their authorities.

(4) Public documents may be in any form including registers, records, books, maps, recordings, photographs, returns, reports and letters.

(5) It is immaterial for purposes of admission how public documents are filed, collected, bound or stored by the person or persons responsible for their custody, or whether such documents are normally classified for security purposes and it is not a requirement for its admissibility that a public document should form part of a register or record to which members of the general public are entitled to access, it is enough if the document was made for any official purpose.

Public Documents of Other Countries

52. (1) For the purposes of this article, a public officer of a country other than Canada is a person who in the opinion of the judge advocate appears to hold an equivalent position and to possess similar authority to a Canadian public officer.

(2) The judge advocate may permit a documentary statement made for an official purpose by a public officer of a country other than Canada to be admitted in evidence to the same extent and in the same manner than an equivalent Canadian public document would be admissible under article 51 and Section 13 (Documents).

Documents of Canadian Forces

53. Subject to article 55 (Limitations on Admission of Certain Documents), and without limiting the general provisions of article 51 (Public Documents), the following classes of service documents are deemed to be public documents and may be proved in the manner provided in Section 13 (Documents) without requiring the personal appearance of the maker as a witness

- (a) orders and instructions issued in writing by or on behalf of military commanders under the authority of Queen's Regulations;
- (b) official gradation and seniority lists; and
- (c) documents and records kept for official purposes, including those kept in respect of officers and men.

NOTES

(A) Section 153 of the *National Defence Act* provides in part:

"153. (1) Such classes of documents and records as are prescribed in regulations made by the Governor in Council may be admitted as evidence of the facts therein stated at trials by court martial or in any proceedings before civil courts arising out of such trials, and the conditions governing the admissibility of such classes of documents and records or copies thereof shall be as prescribed in those regulations."

(M)

*Evidence***Regular Entries**

54. Subject to article 55, a record in any business of an act, condition or event, in so far as relevant, shall be admissible in evidence if proved under article 106 (Proof of Regular Entries) or 107 (Bankers' Books).

Limitations on Admission of Certain Documents

55. Except as specified in this article, and notwithstanding articles 51 (Public Documents), 52 (Public Documents of Other Countries), 53 (Documents of Canadian Forces) and 54, the following documents shall not be admitted in evidence at a court martial

- (a) a synopsis prepared pursuant to QR 109.02 (Preparation and Disposal of Synopsis);
- (b) a report of a civil or military investigation relating to the alleged offence;
- (c) a document that contains a statement classifiable as an official or unofficial confession by the accused except when such evidence is admissible under Section 7 (Confessions of Accused Persons);
- (d) the record of evidence given before, or the findings or decision of, another judicial or official tribunal or body specifically concerned with the investigation of or punitive action in relation to, the acts and events that form the subject of the charge against the accused before the court martial in question except when necessary as evidence in support of a plea of the accused in bar of trial on the basis of a previous acquittal or conviction for the same offence in accordance with section 57 of the *National Defence Act* and QR 112.24 (Plea in Bar of Trial), or when admissible under article 40 (Admissibility of Official Confession), or article 50 (Statements by Persons Other than Accused made in Judicial or Other Official Proceedings); or
- (e) the record of a previous conviction of the accused by a judicial or disciplinary tribunal, except when such evidence is admissible under (d) of this article, Section 5 (Character and Similar Facts) or article 99 (Credibility — Effect of Answers).

NOTES

- (A) A documentary statement referred to in (c) of this article must, if it is to be admissible, meet the requirements of Section 6 (Hearsay Evidence), or Section 7 (Confessions of Accused Persons).
- (B) A documentary statement described in (d) of this article must, if it is to be admissible, meet the requirements of article 40 (Admissibility of Official Confession), or article 50 (Statements by Persons Other than Accused Made in Judicial or Other Official Proceedings).
- (C) A document described in (e) of this article must, if it is to be admissible, meet the requirements of subparagraph (d) of this article, Section 5 (Character and Similar Facts) or article 99 (Credibility — Effect of Answers).

(M)

Expert Opinion as Hearsay

56. When the opinion evidence of an expert admissible under Section 9 (Opinion) is based in whole or in part on the hearsay statement of another expert in the same field, that statement is admissible as part of or as a basis for the opinion evidence (see also article 63 (Opinion of Expert Witness)).

Statements in Learned Treatises

57. Statements in a learned treatise are admissible in evidence if the treatise is identified as authoritative by a witness who is expert in the field with which the treatise is concerned, and any expert in the same field may be asked to explain statements in the treatise (see also article 63 (Opinion of Expert Witness)).

*Evidence***Statutory Declarations**

58. A relevant statement contained in a statutory declaration is admissible under subsection (2) of section 153 of the *National Defence Act*.

NOTES

(A) Section 153 of the *National Defence Act* provides in part:

“153. (2) A court martial may receive, as evidence of the facts therein stated, statutory declarations made in the manner prescribed by the *Canada Evidence Act*, subject to the following conditions,

- (a) where the declaration is one that the prosecutor wishes to introduce, a copy shall be served upon the accused person at least seven days before the trial;
 - (b) where the declaration is one that the accused person wishes to introduce, a copy shall be served upon the prosecutor at least three days before the trial; and
 - (c) at any time before the trial the party upon whom the copy of the declaration has been served under paragraph (a) or (b) may notify the opposite party that he will not consent to the declaration being received by the court martial, and in that event the declaration shall not be received.
- 1950, c. 43, s. 153.”

(M)

Mode of Proving Documentary Statements and Effect of Admission

59. (1) Except where special provision is made in these Rules, the party who seeks to rely on a documentary statement admissible under this Section must prove the existence, character and content of the document concerned by primary or secondary evidence in accordance with Section 13 (Documents).

(2) The admission of a document does not mean that statements contained in it must be accepted as accurate.

(3) The probative value of a documentary statement, the character and content of which has been established, is a matter for the court to determine.

Kinds of Hearsay not Specifically Covered

60. A hearsay statement of a kind not specifically dealt with in Sections

- 6 (Hearsay Evidence),
- 7 (Confessions of Accused Persons), and
- 8 (Other Kinds of Hearsay Evidence),

is admissible and may be quoted by a reporting witness, if

- (a) it would be admissible in a trial involving the same charge or issue in a civil court sitting in Ottawa, and
- (b) its admission would not reduce in any way the rights and privileges of the accused against self-incrimination as provided by these Rules.

NOTES

(A) The effect of this article is that exceptions to the hearsay rule that are not specified in these Rules are still in effect and may be invoked, if required. These exceptions are rarely applicable before courts martial. Examples are:

- Declarations against Interest,
- Declarations by Testators as to Contents of Will,
- Declarations as to Public and General Rights, and
- Declarations as to Pedigree.

(M)

Section 9—Opinion**Opinion — General Rule**

61. Except as provided in this Section and Sections 5 (Character and Similar Facts) and 8 (Other Kinds of Hearsay Evidence), the opinion of a witness is not admissible in evidence.

*Evidence***Expert Witness**

62. (1) When permitted to give an opinion under this Section or Section 8 (Other Kinds of Hearsay Evidence), an expert witness may give the court that opinion whether or not he has observed the facts needing further interpretation.

(2) Unless leave is granted by the judge advocate before any experts have been called by a party, not more than three experts may be examined by that party.

Opinion of Expert Witness

63. (1) When a matter is within the special knowledge of an expert witness, he may give his expert opinion of the direct or indirect significance relative to the charge or issue

- (a) of certain relevant facts that have been or may be established by evidence; and
- (b) hypothetically on the basis of any acceptable version of the facts.

(2) An expert witness may be questioned as to the grounds of his opinion, and in answering may quote the hearsay statement of another expert in the same field (see also articles 56 (Expert Opinion as Hearsay) and 57 (Statements in Learned Treatises)).

Opinion Evidence of Ordinary Witness

64. (1) Subject to (2) and (3) of this article, an ordinary witness may give his opinion of the significance relative to the charge or issue of certain relevant facts needing further interpretation if

- (a) those facts were observed or experienced by him; and
- (b) the inference embodied in his opinion is of a type that persons without special competence in such matters are qualified to make with some accuracy on the basis of their everyday knowledge or experience.

(2) An ordinary witness may give his opinion under (1) of this article whether or not he can remember the particular personally observed or experienced facts on which he based it, if it was so based.

(3) An ordinary witness shall not give his opinion under (1) of this article if the members of the court are clearly in as good a position as is the witness himself to form the necessary opinion.

(4) When permitted to give an opinion under (1) of this article, an ordinary witness may be questioned as to the grounds of his opinion.

NOTES

(A) As a general rule an ordinary witness should tell of the facts he observed by his own senses with as much particularity as is practicable and reasonable, leaving the members of the court to decide the proper inference to be drawn. Much time and effort would be wasted if ordinary witnesses were allowed to speculate without limit about inferences that members of the court are just as well qualified to make for themselves. Nevertheless, because of his personal observation of relevant facts, the occurrence of which cannot be reproduced for the court, the ordinary lay witness may be in a better position than the members of the court to infer general facts from particular ones. For instance, on the issue of the identity of the accused, an ordinary witness may testify that the accused looks to him like the very man he saw running away from the scene of the crime just after it was committed. This is opinion or inference based on more particular facts. If the witness is able to recall particular points of similarity that impress him, then of course he tells of them too, but he may give his conclusion on identification. He may, for example, recall the colour of the hair of the fugitive and a peculiar scar on his face. These same considerations apply to other "facts" which need to be arrived at by opinion or inference, such as drunkenness or the speed of vehicles. On the other hand, obviously there are many matters where the opinion or inference needed can be supplied only by an expert, whether or not the expert personally perceived anything relevant. An engineer is needed to give an opinion on the reason for the collapse of a bridge and a chemist or pathologist to tell of the effect of a poison.

(M)

*Evidence****Opinions of Experts and Ordinary Witnesses***

65. Where in the circumstances the requirements of both articles 63 (Opinion of Expert Witness) and 64 can be satisfied by an expert and an ordinary witness respectively, each may give his opinion of the significance relative to the charge or issue of the same facts.

NOTES

(A) While there is some degree of personal interpretation in all appreciation and reporting of facts by those who observe or experience them, many facts as originally given in evidence need further interpretation to establish their full and true significance with reference to the charge or issue. Opinion evidence is further interpretation by a witness concerning the direct or indirect significance in relation to the charge or issue of certain relevant facts in evidence.

(M)

Opinion in Comparison of Writing

66. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine may be made by witnesses acquainted with the writing, or skilled in the comparison of writing, or by the court itself; and the writing, and the evidence of witnesses respecting it, may be submitted to the court as evidence of the genuineness or otherwise of the writing in dispute.

Section 10—Effect of Public Policy and Privilege***Secrecy***

67. When disclosure of any facts relative to the charge would, in the opinion of the convening authority, be prejudicial to national defence, good international relations or other national interests, evidence of those facts may not be given at a trial open to the public but, subject to article 68, may be given at a trial when the public has been excluded in accordance with QR 112.10 (Who May be Present at a Court Martial).

Effect on Trial if Secrecy Precludes Disclosure

68. If in the opinion of the convening authority the need for secrecy of information relative to the charge concerning national defence, good international relations or other national interests is so vital that the facts concerned should not be disclosed even at a trial from which the public has been excluded, the charge

- (a) shall not be proceeded with, if in the opinion of the convening authority the accused would be prejudiced unless evidence of those facts is adduced; or
- (b) shall be proceeded with and no evidence of those facts given, if the convening authority is of the opinion that the accused would not be prejudiced if no evidence of those facts is adduced.

Decisions on Secrecy

69. (1) The convening authority shall in consultation with the Judge Advocate General or his representative make the decisions required under articles 67 (Secrecy) and 68.

(2) The decisions and opinions of a convening authority under articles 67 and 68 shall be given in writing.

Concealment of Identity of Informants

70. (1) Subject to (2) of this article, a witness who is officially associated with the prosecution may refuse to answer questions concerning the identity of any informant who assisted in furthering the prosecution.

Evidence

(2) If, in the opinion of the judge advocate, it is essential to a fair trial that an informant should be identified and called as a witness, the court shall direct a witness referred to in (1) of this article to answer questions as to the identity of the informant.

Governmental Privilege on Disclosure

71. Except as provided in this Section or in an Act of the Parliament of Canada, there is no official or governmental privilege to withhold relevant evidence from a court martial.

Privilege — Generally

72. Except as provided in this Section, no person is privileged to refuse to disclose or to prevent any other person from disclosing a communication or to refuse to produce a document that has passed between them.

Privilege of Accused

73. (1) The accused is not a compellable witness, but he may, at his option, give evidence when by Queen's Regulations he is permitted to do so.

(2) Neither the court, the judge advocate nor the prosecutor shall comment upon the failure of an accused to testify.

Privilege of Spouse of Accused

74. (1) Subject to (2) of this article, the spouse of the accused may not be compelled to testify either on behalf of the defence or the prosecution.

(2) The spouse of the accused may be compelled to testify for the prosecution without the consent of the accused in cases where the accused is charged

- (a) with inflicting personal injuries by violence or coercion on his spouse; or
- (b) under section 119 of the *National Defence Act* with an offence under section 33 or 34 of the *Juvenile Delinquents Act* or with an offence under sections 135 to 138, 140, 142 to 147, 149, 155, 156, 157, 158, 164, 184, 186, 189, 234 to 236, 241 to 244, 275, paragraph (c) of section 408 of the *Criminal Code*, or an attempt to commit an offence under sections 138 or 147 of the *Criminal Code*.

(3) Neither the court, the judge advocate nor the prosecutor shall comment upon the failure of the spouse of an accused to testify.

Communications during Marriage

75. A husband is not compellable to disclose any communication made to him by his wife during their marriage, and a wife is not compellable to disclose any communication made to her by her husband during their marriage.

Witness — Incriminating Questions

76. The position of a witness at a court martial in respect of incriminating questions is governed by article 97 (Examination of Witnesses — Incriminating Questions).

Solicitor-Client Privilege

77. (1) For the purposes of this article, "legal adviser" means

- (a) a defending officer, counsel or adviser qualified under Queen's Regulations 111.60, and
- (b) a solicitor.

Evidence

(2) A legal adviser is not permitted, except with his client's express consent, to disclose, either during or after the termination of his employment,

- (a) any communication, oral or documentary, made to him as legal adviser, by or on behalf of his client, or
- (b) any advice given to his client by him as legal adviser.

(3) A clerk, stenographer or assistant of a legal adviser is not permitted to disclose any matter relevant to the case of a client of that legal adviser learned by him or disclosed to him in the course of his employment except with the express consent of that client.

(4) No person may be compelled to disclose any communication that he has made to his legal adviser.

- (5) Paragraphs (2), (3) and (4) of this article do not apply to
 - (a) a communication made in furtherance of any criminal purposes, or
 - (b) a fact the legal adviser became acquainted with otherwise than in his character as legal adviser or which his clerks, stenographers or assistants became acquainted with otherwise than in the course of their employment.

NOTES

- (A) This article does not prohibit evidence being given as to the facts in respect of which a communication is made to a legal adviser, if it is otherwise admissible. It merely prohibits the proof of such facts by the communications to a legal adviser.

(M)

Penitential Privilege

78. (1) For the purposes of this article, "penitential communication" means a confession of culpable conduct made secretly and in confidence by a person to a clergyman or priest in the course of the discipline or practice of the church or religious denomination or organization of which the person making the penitential communication is a member.

(2) A person making or receiving a penitential communication may refuse to disclose, or prevent a witness from disclosing, that communication if he claims the privilege and the judge advocate finds

- (a) the communication was a penitential communication; and
- (b) the witness is the person who made the penitential communication or the clergyman or priest to whom it was made.

PART IV — PERMITTED METHODS OF PROOF

Section 11—Oral Testimony***Competence of Witnesses***

79. Every person is competent as a witness unless the judge advocate finds that he is incapable of

- (a) making his evidence intelligible, whether by expressing himself so as to be understood by the court directly, through interpretation by a person who can understand him, or in any other manner; or
- (b) understanding the duty of a witness to tell the truth.

*Evidence****Testimonial Qualification of Witness***

80. (1) Subject to (2) of this article, a witness may testify only to relevant matters that he has perceived with his own senses.

(2) A witness may testify to matters that he has not perceived with his own senses when permitted to do so under Part III (Methods of Proof and Forbidden Types of Evidence), or under article 82 (Testimony by Graphic Media).

Qualification of Expert Witness

81. A witness is an expert witness and is qualified to give testimony if the judge advocate finds that

- (a) to perceive, know or understand the matter concerning which the witness is to testify requires special knowledge, skill, experience or training;
- (b) the witness has the requisite knowledge, skill, experience or training; and
- (c) the expert testimony of the witness would substantially assist the court.

Testimony by Graphic Media

82. (1) For the purposes of this article, “graphic medium” means a model, map, diagram, photograph or other pictorial or graphic mode of description and includes a record of data, experience, communications or events made by accurate mechanical, electrical or other scientific methods.

(2) Subject to (3), (4) and (5) of this article, testimony may be given or supplemented by a graphic medium.

(3) A graphic medium shall be presented as part of the testimony of a witness who has sufficient knowledge of the facts represented to prove that the graphic medium used does accurately represent them.

(4) A photograph or other mode of depicting facts, made with scientific apparatus that is capable of disclosing data not perceivable by the unaided sense, may be admitted as part of the evidence of a witness who can prove that the apparatus was of standard make, in good condition and used by a competent operator.

(5) If proved to be trustworthy, a mechanical, electrical or other device may be employed to display or render audible to the court the data, experience, communications or events recorded by a graphic medium admitted under this article.

Testimony of Accomplice

83. (1) When evidence is given by a person who may be an accomplice, the judge advocate shall:

- (a) instruct the court as to what in law makes a person an accomplice;
- (b) direct the attention of the court particularly to the facts in evidence implicating the witness in the offence charged; and
- (c) submit to the court the issue as to whether or not the facts implicating the witness would make him an accomplice.

(2) Subject to the directions given in connection with articles 85 (Corroboration of Certain Offences) and 86 (Child’s Evidence), if the only evidence against the accused is that given by a witness who may be an accomplice, the judge advocate shall, either

Evidence

- (a) instruct the court that, if it concludes that the witness was at any stage an accomplice in the offence charged, there is danger of injustice in convicting the accused of that offence upon the evidence of the apparent accomplice standing alone and uncorroborated, but it is at liberty to do so; or
- (b) advise the court not to convict on the uncorroborated evidence of the apparent accomplice, but that it is at liberty to do so if it chooses.
- (3) The evidence of one accomplice is not corroborative of the evidence of another accomplice.
- (4) Subject to statutory provisions as to corroboration or the number of witnesses necessary for conviction, if the court considers an accomplice to be a credible witness his evidence may of itself be sufficient for a conviction.

Meaning of Corroboration

84. (1) Corroboration means independent evidence that confirms in some material particular not only the evidence that the offence has been committed, but also that the accused committed it.

(2) The independent testimony mentioned in (1) of this article need not be direct evidence that the accused committed the offence but may be circumstantial evidence of his connection with the offence.

(3) Corroboration may be found in the evidence of the accused or in the evidence of other witnesses whether called for the defence or for the prosecution.

NOTES

(A) The judge advocate must indicate what evidence, if any, is capable of being corroboration, and inform the court that it is for it to decide whether that evidence is, in fact, corroborative.

(M)

Corroboration of Certain Offences

85. (1) Where under the *Criminal Code* or other Act of the Parliament of Canada corroboration of the evidence of a particular witness is required in the trial of a particular issue by a civil court in a criminal case the same corroboration is required in a trial of that issue by a court martial.

(2) In sexual offences, where corroboration is not required under (1) of this article, the judge advocate shall, if applicable, warn the court of the danger of convicting the accused on the uncorroborated evidence of the person in respect of whom the offence is alleged to have been committed.

Child's Evidence

86. (1) The evidence of a child of tender years who is a competent witness under article 79 (Competence of Witnesses) may be admitted though not given on oath if the judge advocate finds that the child

- (a) does not understand the nature of an oath; and
- (b) is possessed of sufficient intelligence to justify the admission of his evidence.

(2) An accused shall not be convicted of an offence upon the unsworn evidence of a child admitted under (1) of this article unless that evidence is corroborated.

(3) The corroboration required in (2) of this article cannot be given by another child of tender years whose evidence is also not given on oath.

Evidence

NOTES

- (A) The judge advocate must make inquiries to obtain the information necessary for him to decide whether the child is competent under (1) of this article.
- (B) A complainant in a sexual case cannot be corroborated by the unsworn and uncorroborated evidence of a child.
- (C) If the child understands the nature of an oath, he must be sworn before giving his evidence.
Corroboration of the sworn evidence of a child is not necessary as a matter of law, but the judge advocate should warn the court that there is a danger in convicting on the uncorroborated evidence of a young child though the court may convict if convinced that the child is telling the truth.
- (M)

Section 12—Examination of Witnesses*Order of Testimony*

87. (1) Subject to QR 112.05 (Procedure to be Followed at a Court Martial), the order of testimony, generally, shall be

- (a) direct examination, that is, the party calling a witness may interrogate him on facts relevant to his case;
- (b) cross-examination, that is, the opposing party then may interrogate the witness on relevant matters, including matters that may tend to discredit the testimony of the witness or support the case of the opposing party; and
- (c) re-examination, that is, the party who called the witness then may interrogate him on matters arising out of the opposing party's cross-examination.

(2) The president, the judge advocate or, with the permission of the president, any member of the court, may put further questions to a witness either during or at the conclusion of the examination described in (1) of this article.

(3) If a witness has been questioned under (2) of this article, the prosecutor or accused may, with the permission of the president, put to him such questions relative to the answers as seem proper to the court.

NOTES

- (A) Reference should also be made to the following:
 QR 112.18 — Objection to Interpreter;
 QR 112.19 — Oath to be Taken by Interpreter;
 QR 112.20 — Oath to be Taken by Witnesses;
 QR 112.21 — Affirmation in Lieu of Oath;
 QR 112.31 — Examination of Witnesses.

(M)

Direct Examination — General Rules

88. (1) Subject to (2) of this article as soon as a witness has been duly sworn, the party calling him shall examine him by means of oral questions confined to facts that are relevant to the charge.

(2) Where a witness is called merely for cross-examination by the opposing party, the party calling him need not examine him.

Direct Examination — Leading Questions

89. (1) Subject to (2) and (3) of this article and to article 90, the party calling a witness shall not ask him a question that

- (a) is in a form calculated to suggest the answer to it;
- (b) contains a statement of some fact material to the issue, and that the witness could answer by a simple affirmative or negative; or
- (c) leads the mind of the witness to a particular subject.

Evidence

- (2) Paragraph (1) of this article does not apply to a question
 - (a) as to introductory matter;
 - (b) as to undisputed matter; or
 - (c) to contradict an account that a witness called by the opposite party has given of an extra-judicial utterance.
- (3) A question is not forbidden on the ground that it leads the mind of a witness to a particular subject if it will tend to elicit fairly in the circumstances the honest belief of the witness.

NOTES

- (A) When leading questions are not permitted, the party calling a witness must not ask "Was not the officer a Major?" but, "What was the rank of the officer?"; not "Was it 1300 hours?" but, "What time was it?"; not "When he was leaving, did he hit you?" but, "When he was leaving, what did he do?".
- (B) Introductory matters about which leading questions may be asked are, for example, the name, address and occupation of a witness.
- (C) The party calling a witness may ordinarily employ leading questions to bring a witness to the scene of a crime. Questions such as "Where were you on Thursday afternoon?" or "What did you do next?" do not need to be asked when the enquiry concerns preliminary matters not in dispute.
- (D) If witness A has given an account of his own utterances, a subsequent witness, B, may be asked a leading question such as "Did A say C struck him?". But, before B is asked this question he should be asked to give his own version of what A said. After this though, unless B may be asked whether or not A made the particular statement, there is no way a complete contradiction can be reached.
- (M)

Hostile Witness

90. (1) If the prosecutor or accused concludes during the direct examination or re-examination of a witness called by him that the witness is

- (a) directly hostile to him, or
- (b) unwilling to give evidence,

the party calling the witness may apply for a declaration that the witness is hostile.

(2) If the judge advocate declares a witness to be hostile, the party who called him may cross-examine him during the remainder of his testimony, whether on direct examination or re-examination.

(3) A declaration that a witness is hostile shall not affect the rights of the opposite party to cross-examine him.

NOTES

- (A) The mere fact that a witness gives evidence unfavourable to the case of the party calling him is not sufficient grounds to declare that witness to be hostile.
- (M)

Recorded Past Recollection

91. (1) Where a witness, when the facts are fresh in his mind, has made or verified a written record of them, and is able to swear to the accuracy of that record, it is, subject to (2) of this article, admissible as part of his testimony, even though he does not have an independent recollection of the facts disclosed in the record.

(2) Before a record of past recollection can be introduced in evidence, it must be shown to have been made or verified at a time when it was sufficiently fresh and vivid in the mind of the witness to make it trustworthy.

(3) Where the original record has been lost or destroyed, a copy that was verified by comparison with the lost original, or verified apart from the original while the recollection of the witness was still fresh, may be used under (1) of this article.

NOTES

- (A) A witness need not, under this article, have been the draftsman of the record, if he verified its correctness when the facts were fresh in his mind.
- (M)

*Evidence****Refreshing Memory of Witness***

92. (1) A witness may be shown a written document to enable him to recall a fact that he has forgotten and, if he then recalls that fact, he may testify to it as he would to any other fact that he has perceived.

(2) In order to refresh his memory, a witness may use documents that are not themselves admissible in evidence.

(3) Documents used under (1) of this article

(a) may be inspected by the judge advocate solely for the purpose of determining whether or not they could properly refresh the memory of the witness; and

(b) must be shown to the opposite party, on demand, for inspection and use in questioning the witness.

NOTES

(A) A witness may not give evidence based on documents prepared by other persons, or by himself, at a time remote from the happening of the relevant fact if the documents simply enable him, by using them, to testify to a fact of which he has no present recollection. The circumstances set out in the foregoing sentence do not constitute recorded past recollection under article 91 as the witness either did not prepare the documents, or check them, when the facts were fresh in his mind. Furthermore, the circumstances do not constitute refreshing the memory under this article as the witness has no present recollection of the events described in the documents.

(M)

Cross-Examination — General Rules

93. (1) Subject to this article and to articles

94 (Cross-Examination — Exemptions),

98 (Credibility of Witness Generally),

99 (Credibility — Effect of Answers),

100 (Credibility — Use of Former Statements to Contradict), and

101 (Credibility — General Reputation of Witness for Veracity),

when a witness is called by one party and sworn, the opposite party may cross-examine him at the proper stage of the trial (see article 87 (Order of Testimony)).

(2) A witness who has been called and sworn may be cross-examined even if direct examination is waived or if the party calling him asks no questions.

(3) The cross-examining party may interrogate a witness on

(a) matters already dealt with in the direct examination;

(b) other relevant facts that constitute part of the cross-examining party's own case; and

(c) subject to (6) of this article, matters that, though otherwise irrelevant, tend to impeach the credit of the witness.

(4) The provisions of article 89 (Direct Examination — Leading Questions) do not apply to the cross-examination of a witness.

(5) The cross-examining party shall not put questions to a witness in a bullying way or in any other manner calculated to confuse or mislead the witness unnecessarily, or to insult him.

(6) Where a question is put to a witness as to a matter that is not relevant except in so far as it affects the credibility of the witness, and the witness objects to answering the question, the judge advocate shall consider whether the witness should be compelled to answer it, and if the judge advocate is of the opinion that the imputation conveyed by the question, would, if true,

Evidence

- (a) seriously affect the opinion of the court as to the credibility of the witness, he shall require the witness to answer the question, or
- (b) not seriously affect the opinion of the court as to the credibility of the witness, he shall excuse the witness from answering the question.

Cross-Examination — Exemptions

94. (1) A witness shall not be cross-examined where

- (a) he was called merely to produce a document of which
 - (i) proof is not required, or
 - (ii) proof is to be given by the testimony of other witnesses;
- (b) he was called in error and knows nothing of the facts in issue; or
- (c) his examination has been stopped by the court before a material question has been put.

(2) A witness called and sworn but not asked any questions by the party calling him, being merely offered for cross-examination, shall not be asked, in cross-examination, questions the sole purpose of which is to discredit him.

Postponement of Cross-Examination

95. The judge advocate may allow the cross-examination of a witness to be postponed where, in his opinion, the application for postponement is not made for purposes of obstruction.

Re-Examination

96. (1) Subject to (2) of this article, the party calling a witness may re-examine him for the purpose of meeting or explaining what has been brought out in cross-examination.

(2) Unless otherwise permitted by the judge advocate, the re-examination of a witness shall be confined to interrogation on matters arising out of cross-examination.

(3) The provisions of article 89 (Direct Examination — Leading Questions) shall apply to the re-examination of a witness.

Examination of Witnesses — Incriminating Questions

97. (1) A witness shall not refuse to answer a question put to him on the ground that the answer may tend to incriminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

(2) Except in so far as the evidence given by a witness is relevant to a charge against him involving perjury, giving false or contradictory evidence, or making a false or contradictory statement, evidence given by a witness shall not be admissible in any subsequent proceeding against him.

Credibility of Witness Generally

98. Subject to paragraph (2) of article 94 (Cross-Examination — Exemptions) and articles 99, 100 (Credibility-Use of Former Statements to Contradict), and 101 (Credibility-General Reputation of Witness for Veracity), the prosecutor or accused may, at the proper stage of the trial, (see QR 112.05 (Procedure to be Followed at a Court Martial)) by cross-examination or by other witnesses, introduce evidence relevant to the credibility of a witness of the other party.

Evidence

NOTES

(A) The following circumstances among others, are relevant in estimating the credit of a witness:

- (a) his honesty;
- (b) his opportunity for observation;
- (c) his capacity to observe;
- (d) his general mental capacity;
- (e) his mental condition when testifying;
- (f) his power of recollection and narration; and
- (g) his freedom from emotional prejudice.

(M)

Credibility — Effect of Answers

99. (1) Where a witness has given testimony on matters not material to the charge, he may be cross-examined on that testimony to test his credibility, but subject to (2) and (3) of this article, his answers on cross-examination are conclusive in the sense that the cross-examining party may not call witnesses to contradict them.

(2) A witness may be cross-examined on matters not material to the charge to test his credibility by disclosing emotional prejudice and, if the witness denies the facts that show his bias or partiality, the cross-examining party may prove these facts by the testimony of other witnesses.

(3) If a witness who has been convicted of an offence is asked whether he has been convicted of any offence, and he denies the fact or refuses to answer, the cross-examining party may prove the conviction.

NOTES

(A) A conviction mentioned in paragraph (3) may be proved under article 105 (Proof of Public Documents).

(M)

Credibility — Use of Former Statements to Contradict

100. (1) For the purposes of this article, "statement" does not include

- (a) a statement that a regulation prescribes is not to be used at a trial; or
- (b) when the accused is a witness, an official or unofficial confession by him that has not been admitted under article 40 (Admissibility of Official Confession), or 42 (Admissibility of Unofficial Confession) respectively.

(2) A witness may be cross-examined in accordance with this article as to a previous statement made by him relative to the charge.

(3) Subject to (4) of this article, a witness may be cross-examined on a statement in writing or reduced to writing without the writing being shown to him.

(4) When a previous statement of a witness is inconsistent with his present evidence and the witness does not admit making the statement, proof may be given that he did make it, but before the proof is given

- (a) when the statement
 - (i) is in writing or reduced to writing, his attention shall be called to the parts of the writing that are to be used to contradict him, or
 - (ii) was oral, the circumstances of the statement sufficient to designate the particular occasion shall be mentioned to him; and
- (b) he shall be asked whether or not he did make the statement.

(5) A writing mentioned in (4) of this article shall, if the judge advocate so requires, be produced for his inspection and decision as to whether or not it may be used for the purpose of contradicting the witness and, if allowed for this purpose, may be used only to the extent necessary to prove that the witness made the statement contained in it.

Evidence

(6) A previous statement proved under this article shall not be considered as evidence of the facts therein but may be considered in so far as it is relevant to the credibility of the witness.

Credibility — General Reputation of Witness for Veracity

101. (1) Subject to (2) and (3) of this article, a cross-examining party may attack the credit of a witness by introducing evidence of his general reputation for veracity.

(2) A witness called to testify to the general reputation for veracity of another witness shall be questioned, first, as to his means of knowledge of the general reputation of the witness to be impeached and shall then be asked: "From your knowledge of the general reputation of the witness for veracity, would you believe him on oath?"

(3) The impeaching witness shall not be asked questions designed to show that the witness whose credit is being attacked has committed particular acts that disentitle him to credit.

Section 13—Documents

Original Documents — Explanation

102. (1) When a document is fully executed in several complete and identical copies, each copy is an original document.

(2) When a document is executed in several copies, and each copy is executed by one or more of the parties only, each copy is an original document for purposes adverse to a party who has executed it.

(3) Subject to (5) of this article, when a number of finished documents apparently uniform were each created for the first time in their intended final form by the same operation of printing, lithography, photography or other reproductive process adapted to secure their uniformity, finished documents that result from repeating the operation of the same process are original documents.

(4) Whether certain finished and apparently uniform documents were created in a manner mentioned in (3) of this article may be inferred from an inspection of them.

(5) A document is not an original document if the party to whom it is adverse proves that the particular reproductive operation concerned or the kind of reproductive process used was not or is not reliable in securing the uniformity of the resulting finished documents.

NOTES

(A) The phrase "for the first time in their intended final form" in paragraph (3) has two effects:

- (i) it distinguishes the making or reproduction of copies of an already finished document from that document, e.g., by photography, and
- (ii) it distinguishes the finished documents themselves from the stencils, printer's plates, engravings or the like which are not the finished or final form intended; stencils, etc., are not original documents by this definition.

(M)

Proof of Documents by Primary Evidence

103. (1) Except where secondary evidence of a document is permitted under this Section, the existence, character or content of a document shall be proved by primary evidence in accordance with (2) of this article.

Evidence

(2) A document is proved by primary evidence by the production of the original document for the inspection of the court and identification of it by a qualified witness as the document it is alleged or appears to be.

(3) For the purposes of this article, a “qualified witness” includes

- (a) the maker of the document;
- (b) a person who perceived the making of it; or
- (c) a person who is properly entrusted with the custody of the document along with others of the same class or type.

Proof of Documents by Secondary Evidence

104. (1) Secondary evidence of the existence, character or content of a document may be given in accordance with (2) of this article when:

- (a) the original document is not available for any reason other than the wrongdoing of the party offering the secondary evidence;
- (b) the original is a public document;
- (c) the original is a document that may be proved by secondary evidence before a civil court sitting in Ottawa in a trial of a similar charge, in which case proof may be given in the manner permitted in that court; or
- (d) the originals consist of numerous documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole and is capable of being ascertained by calculation.

(2) Secondary evidence, either direct or circumstantial, as to the existence, character or content of a document may be given by oral testimony or documents or by an admission under (d) of article 8 (Necessity for Evidence) or (b) of article 37 (Judicial Confession Explained) and, without restricting the generality of the foregoing, will usually be given

- (a) by producing a copy and calling a witness who can testify that the copy is correct; or
- (b) where no copy is obtainable, by calling a witness who has seen the original and can give a reliable account of its character or content.

Proof of Public Documents

105. (1) Proof of the existence, character or content of a public document may be given by primary evidence or secondary evidence.

(2) Without limiting the forms of secondary evidence available, they include

- (a) an examined copy of, or extract from, a public document proved under (2) of article 104;
- (b) the copy received by the addressee, when a public document is communicated by letter, radio, teletype, landline, visual signalling or other reliable means; and
- (c) a copy of, or extract from, a public document signed and certified as a true copy or extract by an official entrusted with custody of the original.

(3) The signature and appropriate official character of the person purporting to have signed and certified the copy or extract mentioned in (c) of (2) of this article shall, *prima facie*, be deemed authentic as they appear, and, unless the other party produces evidence that it is probably not authentic, the party seeking to rely on the document need give no evidence of the authenticity of the copy or extract in addition to its appearance.

Evidence

(4) The documents referred to in sections 19, 21, 22, 23, 24, 25, 26, 27, 30 and 31 of the *Canada Evidence Act* are public documents within the meaning of these Rules and may be proved as provided in those sections.

(5) For the purpose of proving a conviction under (3) of article 99 (Credibility — Effect of Answers), a certificate containing the substance of the charge and conviction, purporting to be signed by the officer having the custody of the records of the court in which the offender was convicted, or by his deputy, shall, upon proof of the identity of the witness as the offender, be evidence of the conviction, without proof of the signature or of the official character of the person appearing to have signed the certificate.

NOTES

(A) Section 50 of the *National Defence Act* provides:

"50. A commission, appointment, warrant, order or instruction in writing purported to be granted, made or issued under this Act is evidence of its authenticity without proof of the signature or seal affixed thereto or the authority of the person granting making or issuing it."

(B) Section 51 of the *National Defence Act* provides:

"51. (1) The Governor General may cause his signature to be affixed to a commission granted to an officer of the Canadian Forces by stamping the signature on the commission with a stamp approved by him and used for the purpose by his authority.

(2) A signature affixed in accordance with subsection (1) is as valid and effectual as if it were in the handwriting of the Governor General, and neither its authenticity nor the authority of the person by whom it was affixed shall be called in question except on behalf of Her Majesty. 1950, c. 43, s. 51."

(C) Sections 19, 21, 22, 23, 24, 25, 26, 27, 30 and 31 of the *Canada Evidence Act* provide:

"19. Every copy of any Act of the Parliament of Canada, public or private, printed by the Queen's Printer, is evidence of such Act and of its contents; and every copy purporting to be printed by the Queen's Printer shall be deemed to be so printed, unless the contrary is shown."

"21. Evidence of any proclamation, order, regulation or appointment, made or issued by the Governor General or by the Governor in Council, or by or under the authority of any minister or head of any department of the Government of Canada and evidence of a treaty to which Canada, is a party, may be given in all or any of the modes following, that is to say:

- (a) by the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to contain a copy of such treaty, proclamation, order, regulation, or appointment or a notice thereof;
- (b) by the production of a copy of such treaty, proclamation, order, regulation or appointment, purporting to be printed by the Queen's Printer for Canada; and
- (c) by the production, in the case of any proclamation, order, regulation or appointment made or issued by the Governor General or by the Governor in Council, of a copy or extract purporting to be certified to be true by the clerk, or assistant or acting clerk of the Queen's Privy Council for Canada; and in the case of any order, regulation or appointment made or issued by or under the authority of any such minister or head of a department, by the production of a copy or extract purporting to be certified to be true by the minister, or by his deputy or acting deputy, or by the secretary or acting secretary of the department over which he presides."

"22. (1) Evidence of any proclamation, order, regulation, or appointment made or issued by a Lieutenant Governor or Lieutenant Governor in Council of any province, or by or under the authority of any member of the executive council, being the head of any department of the government of the province, may be given in all or any of the modes following, that is to say:

- (a) by the production of a copy of the official gazette for the province, purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof;
- (b) by the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the government or Queen's Printer for the province; and
- (c) by the production of a copy or extract of such proclamation, order, regulation or appointment, purporting to be certified to be true by the clerk or assistant or acting clerk of the executive council, or by the head of any department of the government of a province, or by his deputy or acting deputy as the case may be.

(2) *Prima facie* evidence of any proclamation, order, regulation or appointment made by the Lieutenant Governor or Lieutenant Governor in Council of the Northwest Territories, as constituted previously to the 1st day of September, 1905, or of the Commissioner in Council of the Northwest Territories or of the Commissioner in Council of the Yukon Territory, may also be given by the production of a copy of the *Canada Gazette* purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof."

Evidence

"23. (1) Evidence of any proceeding or record whatsoever of, in, or before any court in Great Britain or the Supreme or Exchequer Courts of Canada, or any court in any province of Canada, or any court in any British colony or possession, or any court of record of the United States of America, or of any state of the United States of America, or of any other foreign country, or before any justice of the peace or coroner in any province of Canada, may be made in any action or proceeding by an exemplification or certified copy thereof, purporting to be under the seal of such court, or under the hand or seal of such justice or coroner, as the case may be, without any proof of the authenticity of such seal or of the signature of such justice or coroner, or other proof whatever.

(2) Where any such court, justice or coroner, has no seal, or so certifies, such evidence may be made by a copy purporting to be certified under the signature of a judge or presiding magistrate of such court or of such justice or coroner, without any proof of the authenticity of the signature, or other proof whatsoever."

"24. In every case in which the original record could be received in evidence,

- (a) a copy of any official or public document of Canada or of any province, purporting to be certified under the hand of the proper officer or person in whose custody such official or public document is placed, or
- (b) a copy of a document, by-law, rule, regulation or proceeding, or a copy of any entry in any register or other book of any municipal or other corporation, created by charter or Act of Canada or of any province, purporting to be certified under the seal of the corporation, and the hand of the presiding officer, clerk or secretary thereof,

is receivable in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof."

"25. Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other Act exists that renders its contents provable by means of a copy, a copy thereof or extract therefrom is admissible in evidence in any court of justice, or before a person having, by law or by consent of parties, authority to hear, receive and examine evidence, if it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original has been entrusted."

"26. (1) A copy of any entry in any book kept in any office or department of the Government of Canada, or in any commission, board or other branch of the public service of Canada, shall be received as evidence of such entry, and of the matters, transactions and accounts therein recorded, if it is proved by the oath or affidavit of an officer of such department, commission, board or other branch of the said public service, that the book was, at the time of the making of the entry, one of the ordinary books kept in such office, department, commission, board or other branch of the said public service, that the entry was made in the usual and ordinary course of business of such office, department, commission, board or other branch of the said public service, and that such copy is a true copy thereof.

(2) Where by any Act of Canada or regulation thereunder provision is made for the issue by a department, commission, board or other branch of the public service, of a licence requisite to the doing or having of any act or thing or for the issue of any other document, an affidavit of an officer of the department, commission, board or other branch of the public service, sworn before any commissioner or other person authorized to take affidavits, that he has charge of the appropriate records and that after careful examination and search of such records he has been unable to find in any given case that any such licence or other document has been issued, shall be received as *prima facie* evidence that in such case no licence or other document has been issued.

(3) Where by any Act of Canada or regulation thereunder provision is made for sending by mail any request for information, notice or demand by a department or other branch of the public service, an affidavit of an officer of the department or other branch of the public service sworn before any commissioner or other person authorized to take affidavits setting out that he has charge of the appropriate records, that he has a knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named date to the person or firm to whom it was addressed (indicating such address) and that he identifies as exhibits attached to such affidavit the Post Office certificate of registration of such letter and a true copy of such request, notice or demand, shall, upon production and proof of the Post Office receipt for the delivery of such registered letter to the addressee, be received as *prima facie* evidence of such sending and of such request, notice or demand.

(4) Where proof is offered by affidavit pursuant to this section it is not necessary to prove the official character of the person making the affidavit if that information is set out in the body of the affidavit."

"27. Any document purporting to be a copy of a notarial act or instrument made, filed or unregistered in the Province of Quebec, and to be certified by a notary or prothonotary to be a true copy of the original in his possession as such notary or prothonotary, shall be received in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved; but it may be proved in rebuttal that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of the Province of Quebec, be taken before a notary or be filed, enrolled or unregistered by a notary in the said Province."

Evidence

"30. (1) In this section,

- (a) 'corporation' means the Bank of Canada, the Industrial Development Bank and any bank to which the Bank Act applies, or to which the Quebec Savings Banks Act applies, and each and every of the following carrying on business in Canada, namely, every railway, express, telegraph and telephone company, (except a street railway and tramway company), insurance company or society, trust company and loan company (except a company subject to Part II of the Small Loans Act);
 - (b) 'government' means the government of Canada or of any province of Canada and includes any department, commission, board or branch of any such government; and
 - (c) 'photographic film' includes any photographic plate, microphotographic film and photostatic negative.
- (2) A print, whether enlarged or not, from any photographic film of,
- (a) an entry in any book or record kept by any government or corporation and destroyed, lost, or delivered to a customer after such film was taken,
 - (b) any bill of exchange, promissory note, cheque, receipt, instrument or document held by any government or corporation and destroyed, lost, or delivered to a customer after such film was taken, or
 - (c) any record, document, plan, book or paper belonging to or deposited with any government or corporation;

is admissible in evidence in all cases in which and for all purposes for which the object photographed would have been received upon proof that

- (i) while such book, record, bill of exchange, promissory note, cheque, receipt, instrument or document, plan, book, or paper was in the custody or control of the government or corporation, the photographic film was taken thereof in order to keep a permanent record thereof; and
 - (ii) the object photographed was subsequently destroyed by or in the presence of one or more of the employees of the government or corporation, or was lost or was delivered to a customer.
- (3) Proof of compliance with the conditions prescribed by this section may be given by any one or more of the employees of the government or corporation, having knowledge of the taking of the photographic film, of such destruction, loss, or delivery to a customer, or of the making of the print, as the case may be, either orally or by affidavit sworn in any part of Canada before any notary public or commissioner for oaths.
- (4) Unless the court otherwise orders, a notarial copy of an affidavit under subsection (3) is admissible in evidence in lieu of the original affidavit."

"31. (1) An order in writing, signed by the Secretary of State of Canada, and purporting to be written by command of the Governor General, shall be received in evidence as the order of the Governor General.

(2) All copies of official and other notices, advertisements and documents printed in the Canada Gazette are *prima facie* evidence of the originals, and of the contents thereof."

(M)

Proof of Regular Entries

106. A record in any business of an act, condition or event is proved by the custodian of the record or other qualified person testifying

- (a) to its identity,
- (b) its mode of preparation, and
- (c) to its having been made in the usual and ordinary course of business, at or near the time of the act, condition or event,

if in the opinion of the judge advocate, the sources of information and the method and time of preparation were such as to justify its admission as evidence of possibly significant weight (see also article 54 (Regular Entries)).

Bankers' Books

107. (1) For the purposes of this article:

- (a) "bank" means an establishment or corporation in any country authorized to receive deposits and to pay out money on a customer's order, and includes its agencies and successors; and
- (b) "branch" means an office of a bank, and includes the head office of that bank.

Evidence

(2) Subject to (3) and (6) of this article, a copy of an entry in any book or record kept in a bank or branch is admissible as evidence of the entry, and of the matters, transactions and accounts therein recorded.

(3) A copy of an entry in a book or record kept in a bank or branch shall not be admitted under this article unless it is first proved

- (a) that the book or record was, at the time of making the entry, one of the ordinary books or records of the bank or branch;
- (b) that the entry was made in the usual and ordinary course of business;
- (c) that the book or record is in the custody or control of the bank or branch; and
- (d) that the copy is a true copy,

and the proof of any of these matters may be given by the manager or accountant or a former manager or accountant of the bank or branch, and may be given orally or by affidavit or statutory declaration.

(4) When a cheque has been drawn on a branch by any person, an affidavit or statutory declaration of the manager or accountant of the branch setting out that

- (a) he has made a careful examination and search of the books and records of the branch for the purpose of ascertaining whether or not that person has an account with the branch, and
- (b) he has been unable to find such an account,

shall be admissible as evidence that the person has no account in the branch.

(5) A statement of the official character of a person making an affidavit or statutory declaration may be included in the body of the affidavit or statutory declaration admissible under this article and when so included is evidence of the official character of that person.

(6) Unless by order of the court made for special cause, a bank or officer of a bank shall not be compellable to produce any book or record the contents of which can be proved in the manner prescribed by this Section, or to appear as a witness to prove the matters, transaction, and accounts therein recorded.

Proof of Date, Handwriting and Signature of Documents

108. (1) Documents are presumed to have been executed on the date of execution stated therein but, where there is no date, a wrong date, or conflicting dates, the true date may be proved by oral or other evidence.

(2) When the handwriting of or signature on an unattested document is in issue, the disputed fact may be proved:

- (a) by the testimony of
 - (i) the writer of the document,
 - (ii) a witness who saw the document signed, or
 - (iii) a witness who can satisfy the court that he knows the writing in question;
- (b) by a comparison of the disputed writing with other writing proved to the satisfaction of the court to be genuine (see article 66 (Opinion in Comparison of Writing)); or
- (c) by an admission under subparagraph (d) of article 8 (Necessity for Evidence) or subparagraph (b) of article 37 (Judicial Confession Explained).

Proof of Execution of Attested Documents

109. When the execution of an attested document is in issue, whether or not attestation is required by statute for its effective execution, no attester is a necessary witness even if all attestors are available.

*Evidence***Section 14—Real Evidence*****Admissibility of Real Evidence***

110. (1) Subject to (2) of this article, real evidence is admissible whenever the existence, identity or the quality or condition of a person or thing is relevant (see article 7 (Admission of Evidence)).

(2) Unless the quality or condition of a document is in issue it is not admissible as real evidence.

Introduction of Real Evidence

111. Real evidence may be introduced in the following ways:

- (a) by the production by a witness of the material object for inspection of the court;
- (b) by experimentation in the presence of the court; or
- (c) by a visit of the court to view a place, thing or person, under QR 112.63 (View by Court Martial).

Section 15—Foreign Law***Foreign Law***

112. (1) The law of a country other than Canada relevant to a charge or issue is proved by an expert witness testifying as to that law.

(2) The judge advocate shall, if he so desires or the court so requests, advise the court on the effect of the evidence of an expert witness as to the law of a country other than Canada, and the meaning or construction of that law as proved.

NOTES

- (A) Inquiries must be made to obtain the information necessary for the judge advocate to decide whether an expert witness is competent under (1) of this article.

An expert witness testifying as to foreign law may refer to codes, precedents and recognized authorities in support of his evidence, and the passages and references cited by him are part of his testimony. If the evidence of an expert witness is obscure, or if there is a conflict in the evidence of expert witnesses, the judge advocate may interpret the passages and references cited.

- (B) This article need not be used to prove Canadian provincial law. The court may take judicial notice of that law.

(M)

INDEX

Abetting

commission of offence..... 103.01

Absence Without Authority

desertion..... 103.21

Absence Without Leave

definition..... 103.23

offence..... 103.23

Abuse

of subordinate..... 103.28

Accessories

responsibility of..... 103.01

Accompanying Persons

definition of "accompanies"..... 102.10

jurisdiction over..... 102.09

Accused

appearance before CO after delivery of charge sheet and synopsis..... 109.03

assistance—by officer at trial before CO..... 108.26

attached or seconded—

disciplining—responsibility of CO..... 102.04

how dealt with..... 102.03

character—reference to, excluded from synopsis..... 109.02

civil defences available to..... 103.03

counsel—financial assistance in retaining..... 111.60

custody—

close—

discharge from—

when account in writing not delivered..... 105.19

general..... 105.29

during trial..... 105.28

information—entitlement to..... 105.17

preliminary disposition..... 105.16

open—

conditions..... 105.31

discharge from..... 105.32

when person in..... 105.30

dealt with by own Service..... 102.02

definition..... 112.02

defence—opportunity to prepare..... 111.61

information—

entitlement to when placed in close custody..... 105.17

legal qualifications of prosecutor..... 111.51

joint trials..... 101.09

Accused—(Cont'd)

statement by—caution before making.....	101.08
trial by court martial—(See “ <i>Courts Martial</i> ”.)	

Admissions

accused—caution before making.....	101.08
evidence—admissibility as.....	101.08
similar offence—at court martial.....	112.48

Adviser

accused entitled to at court martial.....	111.60
function of.....	111.60

Affirmation

oath—in lieu of.....	112.21
----------------------	--------

Aiding

commission of offence.....	103.01
----------------------------	--------

Aircraft

civilians—status when embarked in.....	102.10
command in.....	103.42
disobedience to captain of.....	103.42
low flying—offence.....	103.41
offences in relation to.....	103.39
	103.40
of navy—offences in by members of army and airforce—how dealt with...	102.07
of other Services—offence in—how dealt with.....	102.06

Appeal

from finding or sentence of court martial—	
disposition by court Martial Appeal Board.....	115.06
entry.....	115.02
form.....	115.02
grounds for.....	115.01
preliminary disposition.....	115.03
procedure—rules regarding.....	115.07
right to—	
additional to rights under law of Canada.....	115.09
general.....	115.01
to Supreme Court of Canada.....	115.09

Appeal Board (See “*Court Martial Appeal Board*”.)

Arrest (See also “*Custody*”.)

authority to—	
general.....	105.03
men.....	105.05
officers.....	105.04
provost.....	105.09
when ordered by superior.....	105.08
civilians—persons empowered to.....	105.07
definition.....	105.01
escape from.....	103.34
improperly detaining in—offence.....	103.32
improperly freeing person under—offence.....	103.33
manner of effecting.....	105.12
obstructing.....	105.35
officers—special report.....	105.33
refusing assistance—	
to civil power.....	103.36
to Service authorities.....	103.35
resisting.....	103.35
scope of order to.....	105.06
subordinate, by—	
quarrels and disorders.....	105.04
	105.05
under warrant.....	105.10

Assisting Officer

appointment when accused tried by CO.....	108.26
---	--------

Attachment (See “*Officers*” and “*Men*”.)**Attempts**

how charged.....	103.60
to commit offence.....	103.01
to desert.....	103.21

Billeting

offences in relation to.....	103.52
------------------------------	--------

Boards of Inquiry

false evidence before—offence.....	103.51
offences in relation to.....	103.50

Breaking Out

offence.....	103.20
--------------	--------

Caution

accused to be given before making a statement.....	101.08
punishment.....	104.13
rules respecting.....	108.52

Charge

amendment of—at trial by court martial.....	112.22
	112.59
definition.....	106.01
dismissal—definition.....	101.015
disposition—	
application to higher authority for.....	109.01
	109.04
by commanding officer—preliminary.....	107.04
by delegated officer—preliminary.....	107.04
by superior officer—preliminary.....	109.05
entered on charge report.....	106.06
entered on charge sheet.....	106.12
investigation—	
general rules.....	107.05
mode and scope.....	107.02
preliminary.....	107.01
results—reporting.....	107.03

Charge Reports

charges—how entered on.....	106.06
form.....	106.09
offence—statement of.....	106.07
particulars—how entered on.....	106.08
preparation—	
commencement.....	106.05
general provisions.....	106.04
when prepared.....	106.02

Charge Sheets

charge—amendment at trial by court martial.....	112.59
charges—how entered on.....	106.12
convening authority to sign.....	111.07
forwarding by convening authority.....	111.50
offence—statement of.....	106.13
particulars—how entered on.....	106.13
preparation—	
commencement.....	106.11
general provisions.....	106.10
specimens.....	106.15
when prepared.....	106.03

Chief of the Naval Staff

commanding officers—appointment.....	101.01
committing authority.....	114.40
courts martial—convening.....	111.05
detention—suspension.....	114.35
findings—	
quashing.....	114.15
substitution.....	114.17
imprisonment—	
hard labour—prescription as to.....	114.28
suspension.....	114.35
new trial—authority to order.....	117.02

Chief of the Naval Staff—(Cont'd)

punishment—	
limitation of powers of delegated officers.....	108.10
remission, commutation, and mitigation.....	114.27
substitution for illegal.....	114.25

Civil Courts

finding by—bar to trial by service tribunal.....	102.17
jurisdiction.....	102.24

Civilians

accompanying Canadian Forces—jurisdiction over.....	102.09
arrest of.....	105.07
Code of Service Discipline—subject to.....	102.01
educational institutions—not subject to the Code of Service Discipline	
while attending.....	102.11
summary trial—not liable to.....	102.19
status when embarked on vessel or aircraft.....	102.10

Civil Offences

service trial of.....	103.61
-----------------------	--------

Civil Power

neglect or refusal to deliver person over to—offence.....	103.36
---	--------

Clemency

recommendations to.....	112.51
-------------------------	--------

Close Custody (See “Custody”).**Closed Court**

definition.....	112.10
exclusion of persons during.....	112.61

Code of Service Discipline

educational institutions—civilians attending not subject to.....	102.11
female persons—application to.....	102.15
liability—period of.....	102.22
persons subject to.....	102.01

Cognate Offences

conviction of—	
by commanding officer.....	108.33
by delegated officer.....	108.16
conviction of less serious offences.....	103.62
plea of guilty to.....	112.25
special finding of—by court martial.....	112.42

Command

disobedience—given by captain of aircraft.....	103.42
disobedience of lawful.....	103.16
in aircraft.....	103.42
over accompanying persons.....	102.09

Commanding Officer

appointment of by CNS.....	101.01
airforce—attached or seconded—disciplining.....	102.04
army—attached or seconded—disciplining.....	102.04
charges—	
disposition—	
application to higher authority for.....	109.01
preliminary.....	107.04
investigation.....	107.02
command of accompanying persons.....	102.09
definition.....	101.01
powers—exercise of by Senior Officer in Chief Command.....	101.01
punishments—	
action when powers inadequate.....	108.30
powers—	
delegation.....	108.10
general.....	108.27
remission, commutation, and mitigation.....	114.27
responsibility for.....	114.55
submission for approval.....	108.02
reproof by.....	108.40
trial by—	101.11
army—embarked in navy vessels and aircraft.....	102.07
authority for.....	108.25
civilians not liable to.....	102.19
election—trial by court martial.....	108.31
finding and sentence—	
determination.....	108.32
pronouncement.....	108.33
general rules.....	108.29
in first instance.....	108.17
joint accused.....	101.09
airforce—embarked in navy vessels and aircraft.....	102.07
powers—delegation.....	108.10
warrant to arrest—issue by.....	105.10
witnesses—duty to procure.....	111.62

Commanders

offences by when in action.....	103.06
---------------------------------	--------

Committal Order

authority for.....	114.42
form.....	114.42

Compensation

receiving improperly—offence.....	103.49
-----------------------------------	--------

Compulsion

as a defence.....	103.03
-------------------	--------

Condonation

not a defence.....	103.03
--------------------	--------

Conduct

cruel—offence.....	103.26
disgraceful—offence.....	103.26
prejudicial to good order and discipline—offence.....	103.60
scandalous—officers—offence.....	103.25
unnatural—offence.....	103.26

Confessions

caution of accused before making.....	101.08
evidence—admissibility as.....	101.08

Confinement

improper custody—offence.....	103.32
-------------------------------	--------

Confinement to Barracks

punishment.....	104.13
rules respecting.....	108.50

Conspiracy

offence.....	103.14
--------------	--------

Contempt

of service tribunals—offence.....	103.50
-----------------------------------	--------

Convening Authority

courts martial.....	111.05
documents—forwarding by.....	111.50
judge advocate—appointment of.....	111.41
prosecutor.....	111.42
signature—on charge sheet.....	111.07

Convening Order

form.....	111.06
forwarding by convening authority.....	111.50

Conviction

appeal from—	
form and entry.....	115.02
grounds.....	115.01
preliminary disposal.....	115.03
procedure—rules regarding.....	115.07
to Supreme Court of Canada.....	115.08
bar of trial.....	102.17
offences—less serious.....	103.62
	108.16
	108.33
	112.42
pronouncement by CO when detention or reduction in rank appropriate.	108.31
quashing.....	114.15

Convoys

offences in relation to.....	103.38
------------------------------	--------

Counsel

accused—	
at court martial—	
entitlement.....	111.60
financial assistance in retaining.....	111.60
appointment as prosecutor—	
at Disciplinary Courts Martial.....	111.42
at General Courts Martial.....	111.23
courts martial—responsibilities.....	112.58

Counselling

offence.....	103.01
--------------	--------

Court Martial Appeal Board

appeal from decision of.....	115.08
composition and function.....	115.05
disposition of appeals.....	115.06
payment of members.....	115.05
rules of appeal procedure—establishment.....	115.07

Courts Martial

accused—	
admission of similar offence.....	112.48
confessions and admissions.....	101.08
defending officer, counsel, or adviser—	
appointment.....	111.60
entitlement to.....	111.60
responsibilities.....	112.58
defence—	
preparation.....	111.61
scope of.....	112.57
election of trial by—	
right to.....	108.31
withdrawal of.....	111.65
information—	
as to legal qualifications of prosecutor.....	111.51
as to prosecution witnesses.....	111.64
insanity—	
at trial—	
decision as to.....	112.65
trial as to.....	102.175
at time of offence.....	112.43
objections by—	
to interpreter.....	112.18
to president or members.....	112.14
opening address by.....	112.29
punishment—address as to.....	112.47
admission to.....	112.10
appeal from—right of.....	115.01
application for—	
educational institutions—when accused persons attending.....	102.11
how dealt with.....	109.05
how to be made.....	109.04
charge—	
amendment of.....	112.59
particulars deficient—action when.....	112.22

Courts Martial—(Cont'd)

clemency—recommendations to.....	112.51
closed court—definition.....	112.10
composition—	
addition of members after disposal of accused's objections.....	112.67
change of, due to death or disability of members.....	112.64
Disciplinary Courts Martial.....	111.37
General Courts Martial.....	111.18
contempt—offence.....	103.50
convening—authority for.....	111.05
convening order—form.....	111.06
Disciplinary—	
composition.....	111.37
judge advocate—appointment.....	111.41
jurisdiction.....	111.35
members—	
eligibility to serve as.....	111.38
ineligibility to serve as.....	111.39
president—rank of.....	111.40
prosecutor—appointment.....	111.42
punishment—limitations.....	111.36
evidence—	
application of provincial laws.....	112.68
documents and records—admissibility.....	111.69
on commission.....	112.70
statutory declaration—admissibility.....	112.72
taken on oath.....	112.20
witnesses—admissibility in proceedings against.....	112.71
false evidence before—offence.....	103.51
findings and sentences—	
determination of.....	112.40
directions respecting.....	112.41
irregularities in procedure—effect upon.....	101.06
special.....	112.42
General—	
composition.....	111.18
judge advocate—appointment.....	111.22
jurisdiction.....	111.16
members—	
eligibility to serve as.....	111.19
ineligibility to serve as.....	111.20
rank of.....	111.21
president—rank of.....	111.21
prosecutor—appointment.....	111.23
punishment—limitations.....	111.17
in camera—definition.....	112.10
joint trials.....	101.09
judge advocate—	
appointment.....	111.22, 111.41
responsibilities.....	112.55
Judge Advocate General—	
review by—	
general.....	116.01
procedure when illegality exists.....	116.02
judicial notice.....	101.04

Courts Martial—(Cont'd)

jurisdiction barred—	
accused insane at trial.....	102.175
previous trial for same offence.....	102.17
when sentence passed on admission of similar offence.....	102.18
members—	
absence of.....	112.67
addition of after disposal of accused's objections.....	112.67
inquiry as to disqualification of.....	112.03
minutes of proceedings—	
accused to be furnished with.....	112.66
loss.....	101.10
recording.....	112.66
oaths—	
affirmation in lieu.....	112.21
interpreter.....	112.19
judge advocate.....	112.16
members.....	112.15
reporter.....	112.17
witnesses.....	112.20
offence—similar—admission of.....	112.48
offences in relation to.....	103.50
pleas—	
change of.....	112.26
guilty—	
acceptance of.....	112.25
procedure on.....	112.27
in bar of trial.....	112.24
president—	
duty to procure witnesses.....	111.62
responsibilities—general—during trial.....	112.54
procedure—	
adjournment.....	112.62
exclusion of persons during closed court.....	112.61
general.....	112.05
incidental questions.....	112.60
minutes of proceedings—recording.....	112.66
swearing of court to try several accused.....	112.675
view of places, things, or persons.....	112.63
prosecutor—	
opening address by.....	112.28
responsibilities.....	112.56
punishment—commencement.....	114.05
responsibilities—during trial—general.....	112.54
sentences—	
admission of similar offence to be taken into account.....	112.48
determination of.....	112.49
directions respecting.....	112.50
irregularities in procedure—effect upon.....	101.06
witnesses—	
evidence—admissibility in proceedings against.....	112.71
examination of.....	112.31
hostile—declaration.....	112.32
incriminating questions—refusal to answer.....	112.71
procuring method of.....	111.63
re-examination.....	112.33
responsibility to procure.....	111.62

Courts Martial (Cont'd)

trial by—	
defence—	
defending officer, counsel, or adviser—	
entitlement to.....	111.60
responsibilities.....	112.58
opening address.....	112.29
preparation.....	111.61
scope.....	112.57
witnesses for—duty to procure.....	111.62
documents—	
accused to receive before trial.....	111.51
acknowledgement of receipt.....	111.52
election to—	
right of.....	108.31
withdrawal of.....	111.65

Cowardice

offence of.....	103.07
-----------------	--------

Criminal Code

offences under.....	103.61
---------------------	--------

Custody

close—	
conditions of—	
men.....	105.23
common to officers and men.....	105.24
officers and chief petty officers.....	105.225
discharge from—	
general.....	105.29
when account in writing not received.....	105.19
during trial.....	105.28
duty to receive accused.....	105.18
how effected.....	105.14
observation of persons in.....	105.26
placing subordinate in.....	105.15
preliminary disposition of accused.....	105.16
report to superior authority.....	105.20
when advisable.....	105.13
women—special conditions.....	105.25
committal—account in writing upon.....	105.18
distinction between close and open.....	105.01
escape from—offence.....	103.34
hospital—person in close custody sent to.....	105.27
improper—offence.....	103.32
improperly freeing person in—offence.....	103.33
information to which accused entitled upon being placed in.....	105.17
interim—	
removal from.....	105.22
report on.....	105.22
army, airforce, or civil—removal from.....	105.22
open—	
conditions of.....	105.31
discharge from.....	105.32
when person in.....	105.30

Custody—(Cont'd)

refusing assistance—offence.....	103.35
striking custodian—offence.....	103.20
subordinate—placing in close custody.....	105.15
without trial—	
limitations.....	105.34
petition to Minister regarding.....	105.34
reporting.....	105.34
women—special conditions of close custody.....	105.25

Damage

property—by negligent or furious driving—offence.....	103.43
---	--------

Damaging

property—offence.....	103.48
-----------------------	--------

Dangerous Substances

offences in relation to.....	103.59
------------------------------	--------

Death

punishment—	
approval of.....	114.07
award of.....	104.04

Declaration (See “Statutory Declaration”.)**Defence**

insanity as.....	103.04
scope—at trial by court martial.....	112.57
to charge—what may be.....	103.03

Defending Officer

entitlement to and appointment of.....	111.60
--	--------

Definitions

absence without leave.....	103.23
accompanies—person accompanying Canadian Forces.....	102.10
accused.....	112.02
active service.....	103.10, 103.21
arrest.....	103.31
authorized in the circumstances.....	105.01
charge.....	103.41
close custody.....	106.01
closed court.....	105.01
colour of right.....	112.10
commanding officer.....	103.46
commutation.....	101.01
conspires.....	114.27
conversion.....	103.14
convoying.....	103.46
court martial.....	103.38
cowardice.....	111.63
cowardly.....	103.06, 103.07
custody—how construed in Chapter 114.....	103.38
	114.02

Definitions—(Cont'd)

desertion.....	103.21
dismissal.....	101.015
examination.....	112.02
fraudulent.....	103.49
hazards.....	103.37
illegal.....	115.01
in camera.....	112.10
injuries.....	103.31
intent.....	103.07
intoxicated.....	103.43
intoxication.....	103.43
irregularly.....	103.10
knowingly.....	103.29
legality.....	115.01
less punishment.....	104.03
maims.....	103.31
mitigation.....	114.27
mutiny.....	103.12
neglect.....	103.43, 103.60
neglect of duty.....	103.09
negligently.....	103.33, 103.37, 103.39
	103.45, 103.56, 103.57
	103.59
offers violence.....	103.17, 103.20
open custody.....	105.01
rank—how construed.....	101.02
remission.....	114.27
resists.....	103.20
ringleader.....	103.13
safeguard.....	103.08
sentence.....	104.14
sequestration.....	103.39
traitorously.....	103.06, 103.07
	103.08, 103.09
wilful.....	103.09, 103.31
	103.43
wilfully.....	103.31, 103.33, 103.35
	103.37, 103.39, 103.45
	103.48, 103.58, 103.59
without authority.....	103.08, 103.21
	103.23, 103.33

Delegated Officer

charges—	
disposition—preliminary.....	107.04
punishments—	
action when powers inadequate.....	108.14
powers—	
authorization.....	108.10
general.....	108.11
trial by—	
authority for.....	108.10
finding and sentence—	
determination.....	108.15
pronouncement.....	108.16
general rules.....	108.13

Desertion

connivance at—offence.....	103.22
offence.....	103.21

Destroying

property—offence.....	103.48
-----------------------	--------

Detention

committal and transfer.....	114.42
committing authorities.....	114.40
insanity while in.....	114.50
punishment of.....	104.08
released persons undergoing punishment of—jurisdiction over.....	102.13
removal from—temporarily.....	114.46
suspension—	
authorization.....	114.35, 114.55
conditions governing.....	114.36
time reckoned toward completion of term.....	114.06

Detention Barracks

committal to.....	114.45
designation of places to be.....	114.41
insanity while in.....	114.50
removal from—temporarily.....	114.46

Disciplinary Courts Martial (See “Courts Martial”)**Disease**

feigning, aggravating, producing, etc.—offence.....	103.31
---	--------

Disgraceful Conduct

offence.....	103.26
--------------	--------

Disloyalty

offence.....	103.27
--------------	--------

Dismissal

definition.....	101.015
punishment—	
approval of.....	114.08
award of.....	104.07

Dismissal With Disgrace

punishment—	
approval of.....	114.08
award of.....	104.06

Disobedience

command of captain of aircraft—offence.....	103.42
lawful command—offence.....	103.16
order to submit to inoculation, etc.—offence.....	103.58

Disorders

offence.....103.20, 103.60

Disturbances

causing—offence.....103.19

Documents

concerning incarceration—authority of.....114.48
 offences in relation to.....103.57

Documents and Records

evidence—admissibility as.....112.69

Drunkenness

absence without leave—no excuse for.....102.23
 defence.....103.03
 driving intoxicated.....103.43
 in the presence of the enemy—offence.....103.07
 offence of.....103.30
 sentry or lookout—offence.....103.08

Duty

negligent performance of —offence.....103.56

Educational Institutions

civilians attending—not subject to the Code of Service Discipline.....102.11
 command of officers and men.....102.11
 officers in command—powers.....102.11

Enemy

offences in relation to.....103.06, 103.07
 103.08, 103.09
 spying for—offence.....103.11

Engagements—Special

jurisdiction over person serving under.....102.14

Enrolment

false answer on—offence.....103.54
 fraudulent—offence.....103.53
 unlawful—assisting—offence.....103.55

Escape

from custody—offence.....103.34
 person in custody—assisting—offence.....103.33

Espionage

spying for the enemy—offence.....103.11

Evidence

admissions.....	101.08
confessions.....	101.08
documents and records—admissibility.....	112.69
false—offence.....	103.51
oath taken before giving—	
at court martial.....	112.20
at summary trial by commanding officer.....	108.29
at summary trial by delegated officer.....	108.13
on commission.....	112.70
public property—presumption of ownership.....	101.05
rules of—provincial law to be applied.....	112.68
statutory declarations.....	112.72
synopsis—preparation.....	109.02
witnesses at court martial—admissibility in proceedings against.....	112.71

Examination

cross-examination.....	112.31
definition.....	112.02
re-examination.....	112.33
witnesses at courts martial.....	112.31

Excuse

drunkenness—for AWL.....	103.23
for offence—what may be.....	103.03
ignorance of law.....	103.02

Extra Work and Drill

punishment.....	104.13
rules respecting.....	108.51

False Accusations

offence.....	103.29
--------------	--------

False Statement

affecting character—offence.....	103.29
documents—offence.....	103.57
leave prolongation—offence.....	103.24

Fighting

offence.....	103.19
--------------	--------

Findings

alteration—powers of commanding officer.....	114.55
irregularities in procedure—effect upon.....	101.06
quashing—	
authority for.....	114.15
effect on sentence.....	114.16
powers of CO.....	114.55
substitution of—	
effect on sentence.....	114.18
new for illegal.....	114.17, 114.55

Findings—(Cont'd)

summary trial by CO—	
determination of.....	108.32
pronouncement of—	
general.....	108.33
to chief petty officer or petty officer—when detention or reduction	
in rank appropriate.....	108.31
summary trial by delegated officer—	
determination of.....	108.15
pronouncement of.....	108.16
trial by court martial—	
determination of.....	112.40
directions respecting.....	112.41
special.....	112.42

Fine

punishment of.....	104.12
--------------------	--------

Fires

causing—offence.....	103.45
----------------------	--------

Flying

command in aircraft.....	103.42
low—offence.....	103.41

Force

defence for use of.....	103.03
-------------------------	--------

Forfeiture of Seniority

punishment of.....	104.10
--------------------	--------

Forms

account in writing.....	105.20
charge report.....	106.09
charge sheet.....	106.15
committal order.....	114.42
convening order.....	111.06
oaths—	
interpreter at courts martial.....	112.19
judge advocate at courts martial.....	112.16
members of courts martial.....	112.15
reporter at courts martial.....	112.17
witnesses—	
at courts martial.....	112.20
at summary trial by CO.....	108.29
at summary trial by delegated officer.....	108.13
punishment warrant.....	108.40
receipt for documents transmitted to accused.....	111.52
statement of appeal.....	115.02
statement of offence.....	103.05
statutory declaration.....	111.53
synopsis.....	109.02
warrant of arrest.....	105.11

Fraud

offences involving.....	103.49
-------------------------	--------

Fraudulent Enrolment

offence.....	103.53
--------------	--------

General Courts Martial (See “*Courts Martial*”.)

Gliders

command in.....	103.42
-----------------	--------

Hard Labour

imprisonment without—order regarding.....	114.28
---	--------

Hazarding

vessels—offence.....	103.37
----------------------	--------

Hospital

close custody in.....	105.27
-----------------------	--------

Ignorance of the Law

no excuse for offence.....	103.02
----------------------------	--------

Ill-Treatment

of subordinates.....	103.28
----------------------	--------

Imprisonment

committal.....	114.42
committing authorities.....	114.40
punishment of.....	104.05
released persons undergoing punishment of—jurisdiction over.....	102.13
removal from—temporarily.....	114.46
suspension—	
authorization.....	114.35
conditions governing.....	114.36
time reckoned toward completion of term.....	114.06
transfer.....	114.42
without hard labour—order respecting.....	114.28

Incarceration

civil prisons—rules regarding service prisoners.....	114.47
committal—	
to civil prisons.....	114.44
to detention barracks.....	114.45
to penitentiaries.....	114.43
committal and transfer—authority for.....	114.42
committing authorities.....	114.40
documents respecting—authority of.....	114.48
insanity—	
while in detention barracks.....	114.50
while in penitentiaries or prisons.....	114.49

Incarceration—(Cont'd)

penitentiaries—rules regarding service convicts.....	114.47
removal from—temporarily.....	114.46
service prisons and detention barracks—designation.....	114.41

Indecency

offence.....	103.26
--------------	--------

Infirmity

feigning, producing, etc.—offence.....	103.31
--	--------

Injuring

self or another—	
by negligent or furious driving—offence.....	103.43
wilfully—offence.....	103.31

Inoculation

refusal to submit to—offence.....	103.58
-----------------------------------	--------

Insanity

accused—	
at trial by court martial—	
decision as to.....	112.65
jurisdiction barred.....	120.175
when offence committed—procedure.....	112.43
as a defence.....	103.04
while in detention barracks.....	114.50
while in penitentiaries or prisons.....	114.49

Instructions

breach of—how charged.....	103.60
----------------------------	--------

Insubordination

behaving with contempt toward superior—offence.....	103.18
insulting superior—offence.....	103.18
threatening superior—offence.....	103.18

Interpreter

oath to be taken by.....	112.19
objection to by accused.....	112.18

Investigation

charges—preliminary—	
disposition after.....	107.04
general rules.....	107.05
mode and scope of.....	107.02
reporting.....	107.03
requirement for.....	107.01

***Joint Trials* (See “*Trials*”.)**

Judge Advocate

Disciplinary Courts Martial—appointment.....	111.41
General Courts Martial—appointment.....	111.22
inability to attend.....	112.64
oath to be taken by.....	112.16
presence during closed court.....	112.61
responsibilities—general.....	112.55

Judge Advocate General

courts martial—review by.....	116.01
-------------------------------	--------

Judicial Notice

taking of—by service tribunal.....	101.04
------------------------------------	--------

Jurisdiction

accompanying persons.....	102.09
accused—	
attached or seconded—how dealt with.....	102.03
insane at trial.....	102.04
tried within own Service.....	102.175
tried within own Service.....	102.02
acquittal—previous.....	102.17
army—	
offences by members of—in vessels or aircraft.....	102.07
offences in vessels or aircraft of.....	102.06
barred—	
acquittal or conviction—previous.....	102.17
admission of similar offence.....	102.18
civilians not liable to summary trial.....	102.19
insanity of accused at trial.....	102.175
civil courts.....	102.24
civilians not liable to summary trials.....	102.19
Code of Service Discipline—	
period of liability under.....	102.22
persons subject to.....	102.01
women—application to.....	102.15
conviction—previous.....	102.17
Disciplinary Courts Martial.....	111.35
dismissal—previous.....	102.17
educational institutions—persons attending.....	102.11
Forces—	
Commonwealth—attached or seconded.....	102.05
raised outside of Canada.....	102.08
General Courts Martial.....	111.16
murder or manslaughter.....	102.23
navy—	
offences by members of—in vessels or aircraft.....	102.07
offences in vessels or aircraft of.....	102.06
place of commission of offence.....	102.20
place of trial.....	102.21
rape.....	102.23
released persons serving sentence.....	102.13
special engagements—persons serving under.....	102.14
spies for the enemy.....	102.12
summary trial—	
by commanding officer.....	108.25
by delegated officer.....	108.10

Less Punishment

definition..... 104.03

Leave

false statement for prolongation—offence..... 103.24

Logging

conduct of officers..... 101.11

Losing

property—offence..... 103.48

vessels—offence..... 103.37

Loss

minutes of court martial proceedings..... 101.10

Maiming

self or another—offence..... 103.31

Malingering

offence..... 103.31

Manslaughter

offence—jurisdiction of service tribunals..... 102.23

Medical Treatment

refusal to submit to—offence..... 103.58

Men

attached and seconded—

disciplinary action against..... 102.04

from Commonwealth Forces..... 102.05

offenders—how dealt with and tried..... 102.03

subject to Code of Service Discipline..... 102.01

close custody—conditions of..... 105.23

..... 105.24

Minister

committing authority..... 114.40

court martial—

convening..... 111.05

prescription of convening authorities..... 111.05

custody—petition to be freed from..... 105.34

detention—suspension..... 114.35

findings—

quashing..... 114.15

substitution..... 114.17

imprisonment—

hard labour—prescription as to..... 114.28

suspension..... 114.35

insanity of accused at trial—responsibility for disposition of..... 102.175

joint trials..... 101.09

punishment—

substitution of new for illegal..... 114.25

remission, commutation, and mitigation..... 114.27

Minor Punishments

sentence of Disciplinary Court Martial not to include.....	111.36
sentence of General Court Martial not to include.....	111.17
types.....	104.13

Minutes

court martial proceedings—	
accused to be furnished with.....	112.66
loss.....	101.10
recording admission of similar offences.....	112.48
recording of recommendation to clemency.....	112.51

Murder

offence—jurisdiction of service tribunals.....	102.23
--	--------

Mutiny

offences in relation to—general.....	103.14
with violence—offence.....	103.12
without violence—offence.....	103.13

Negligence

dangerous substances—respecting.....	103.59
duties—respecting performance of.....	103.56
prejudicial to good order and discipline.....	103.60

Notes

basis for.....	101.03
how construed.....	101.03

Oath

affirmation in lieu.....	108.13, 108.29
form—	112.21
interpreter at court martial.....	112.19
judge advocate at court martial.....	112.16
members of court martial.....	112.15
reporter at court martial.....	112.17
witnesses—	
at court martial.....	112.20
at summary trial by commanding officer.....	108.29
at summary trial by delegated officer.....	108.13
objections to.....	112.21
refusal to take offence—.....	103.50
swearing of—procedure—	
courts martial—general.....	112.05
courts martial trying several persons.....	112.675
witnesses at summary trials—	
by commanding officer.....	108.29
by delegated officer.....	108.13

Objections (See “*Courts Martial—Accused—objections by*”.)

Obstructing

persons carrying out arrest.....	103.35
----------------------------------	--------

Offences

abetting—commission of.....	103.01
absence without leave.....	103.23
abuse of subordinates.....	103.28
accessories.....	103.01
act to the prejudice of good order and discipline.....	103.60
admission of similar—at courts martial.....	112.48
aggravating disease.....	103.31
aiding—commission of.....	103.01
aircraft—	
disobedience to captain.....	103.42
inaccurate certificate respecting.....	103.40
wrongful acts respecting.....	103.39
	103.40
arrest—	
detaining unnecessarily.....	103.32
escape from.....	103.34
improperly freeing persons under.....	103.33
refusing assistance.....	103.35, 103.36
resisting.....	103.35
arson—offences resembling.....	103.45
attempting to desert.....	103.21
attempts to commit.....	103.01
billeting—offences respecting.....	103.52
boards of inquiry—offences respecting.....	103.50, 103.51
breaking out.....	103.20
certificate—inaccurate respecting aircraft.....	103.40
civil defences.....	103.03
civil offences—service trial of.....	103.61
civil power—obstruction of.....	103.36
cognate offences.....	103.62
command—	
disobedience of lawful.....	103.16
in aircraft and gliders.....	103.42
commanders—offences by.....	103.06
compensation—improper demand of.....	103.49
compulsion—as a defence.....	103.03
conduct—	
cruel or disgraceful.....	103.26
scandalous—by officers.....	103.25
to the prejudice of good order and discipline.....	103.60
confinement—unnecessarily detaining in.....	103.32
contempt of service tribunals.....	103.50
conviction for related or less serious offence.....	103.62
convoys—offences respecting.....	103.38
counselling—commission of.....	103.01
courts martial—offences before.....	103.50
	103.51
cowardice.....	103.07
Criminal Code—offences under.....	103.61
cruelty.....	103.26
custody—	
escape from.....	103.34
improper.....	103.32

Offences—(Cont'd)

custody—(<i>Cont'd</i>)	
improperly freeing persons in.....	103.33
refusing assistance to civil power.....	103.36
resisting.....	103.35
damaging property.....	103.48
dangerous substances—offences respecting.....	103.59
decorations—pawning or selling.....	103.48
defences—civil.....	103.03
deserter—failure to apprehend.....	103.22
desertion—	
commission of.....	103.21
connivance at.....	103.22
destroying property.....	103.48
disclosures—wrongful.....	103.08
disease—	
delaying cure of.....	103.31
feigning or aggravating.....	103.31
disloyal words.....	103.27
disobedience—	
of lawful command.....	103.16
to captain of aircraft.....	103.42
respecting inoculations, etc.....	103.58
disorders.....	103.20
disorders to the prejudice of good order and discipline.....	103.60
disturbances—causing.....	103.19
documents—offences respecting.....	103.57
drunkenness—	
as a defence.....	103.03
commission of.....	103.30
on watch.....	103.07
when sentry or lookout.....	103.08
duties—negligent performance.....	103.56
enemy—	
offences by commanders respecting.....	103.06
offences in relation to.....	103.07, 103.08
enrolment—	
assisting unlawful.....	103.55
false answer on.....	103.54
fraudulent.....	103.53
escape—	
assisting.....	103.33
from custody.....	103.34
excuse—	
as a defence.....	103.03
ignorance of law.....	103.02
false accusations or statements.....	103.29
false evidence.....	103.51
fighting.....	103.19
fires—causing.....	103.45
force—	
advocated to change government.....	103.15
as a defence.....	103.03
form of statement of.....	103.05
fraudulent acts.....	103.49

Offences—(Cont'd)

feigning disease.....	103.31
gliders—command in.....	103.42
ignorance of law no excuse.....	103.02
ill-treating of subordinates.....	103.28
injury—self-inflicted.....	103.31
inoculation—disobedience respecting.....	103.58
insanity as a defence.....	103.04
instructions—breach of.....	103.60
insubordination.....	103.18
insulting superior.....	103.18
intelligence—giving to the enemy.....	103.08
indecenty.....	103.26
justification for.....	103.03
leave—false statement respecting.....	103.24
low flying.....	103.41
maiming.....	103.31
malingering.....	103.31
manslaughter—jurisdiction of service tribunal.....	102.23
medical treatment—disobedience respecting.....	103.58
mutiny.....	103.12, 103.13, 103.14
murder—jurisdiction of service tribunal.....	102.23
neglect to the prejudice of good order and discipline.....	103.60
negligence respecting dangerous substances.....	103.59
negligent performance of duties.....	103.56
operations—miscellaneous offences related to.....	103.10
orders—breach of.....	103.60
particulars of—	
how entered on charge report.....	106.08
how entered on charge sheet.....	106.14
parties to.....	103.01
pawning decorations.....	103.48
prisoners of war.....	103.09
procuring—commission of.....	103.01
property—damaging, destroying, losing, or selling.....	103.48
quarrelling.....	103.19, 103.20
rape—jurisdiction of service tribunal.....	102.23
receiving.....	103.47
redress—	
false statements respecting.....	103.29
suppressing material fact.....	103.29
regulations—breach of.....	103.60
related offences—conviction for.....	103.62
resisting arrest.....	103.35
resisting escort.....	103.20
responsibility for.....	103.01
retaining improperly.....	103.47
sanity presumed.....	103.04
security.....	103.08
sedition.....	103.15
self-defence.....	103.03
self-injury.....	103.31
selling decorations.....	103.48
selling property improperly.....	103.48
service tribunals—contempt of.....	103.50
similar—admission of at court martial.....	112.48
spying for the enemy.....	103.11

Offences—(Cont'd)

statements of—	
form.....	103.05
on charge report.....	103.46
on charge sheet.....	106.13
stealing.....	103.46
striking—	
custodian.....	103.20
subordinate.....	103.28
superior.....	103.17
superior—offences against.....	103.17, 103.18
theft.....	103.46
threatening superior.....	103.18
traitorous words.....	103.27
vaccination—disobedience respecting.....	103.58
vehicles—	
improperly driving.....	103.43
unauthorized use.....	103.44
vessels—	
hazarding, losing or stranding.....	103.37
under convoy.....	103.38
violence—	
against custodian.....	103.20
against superior.....	103.17
witnesses—offences by.....	103.50, 103.51

Officers

arrest—special report.....	105.33
attached or seconded—	
Code of Service Discipline—subject to.....	102.01
disciplinary action against.....	102.04
from Commonwealth Forces.....	102.05
offenders—how dealt with and tried.....	102.03
close custody—conditions of.....	105.225, 105.24
logging conduct.....	101.11
scandalous conduct—offence.....	103.25

Opening Address

at trial by court martial—	
accused.....	112.29
prosecutor.....	112.28

Open Custody (See “Custody”)
Operations

miscellaneous offences related to.....	103.10
--	--------

Orders

breach of—how charged.....	103.60
----------------------------	--------

Pawning

orders, decorations, and medals—offence.....	103.48
--	--------

Penitentiary

committal to.....	114.43
insanity while in.....	114.49
removal from, temporarily.....	114.46
service convict—rules applicable to.....	114.47

Petition

new trial—	
disposition.....	117.02
right to.....	117.01
release from custody.....	105.34

Plea

change of during trial.....	112.26
guilty—	
acceptance of.....	112.25
procedure.....	112.27
in bar of trial.....	112.24

Prisoners of War

offences by.....	103.09
------------------	--------

Prisons

civil—	
committal to.....	114.14
insanity while in.....	114.49
rules regarding service prisoners.....	114.47
committal to—authority for.....	114.42
removal from—temporarily.....	114.46
service—	
designation of place to be.....	114.41
insanity while in.....	114.50

Procedure

irregularities in—effect upon finding and sentence.....	101.06
unusual situations.....	101.07

Proceedings

court martial.....	112.05
minutes of court martial—loss.....	101.10

Prosecutor

appointment—	
Disciplinary Courts Martial.....	111.41
General Courts Martial.....	111.23
opening address by.....	112.28
qualifications—legal—accused to be informed of.....	111.51
responsibility.....	112.56
witnesses of—accused to be notified of.....	111.64

Property

destruction, loss, or improper disposal—offence.....	103.48
public—presumption of ownership.....	101.05

Provost

arrest—authority for.....	105.09
---------------------------	--------

Punishment

address by accused in mitigation.....	112.47
caution—	
award.....	104.13
rules respecting.....	108.52
commanding officers' responsibility for.....	108.02
commencement.....	114.05
commutation.....	114.27
death—	
approval.....	114.07
award.....	104.04
deprivation of good conduct badges—	
award.....	104.13
rules respecting.....	108.46
detention—	
award.....	104.08
suspension—	
authority for.....	114.35
conditions governing.....	114.36
time reckoned against completion of term.....	114.06
dismissal—	
approval.....	114.08
award.....	114.07
dismissal with disgrace—	
approval.....	114.08
award.....	114.06
extra work and drill—	
award.....	104.13
rules respecting.....	108.48
extra work or drill not exceeding two hours a day—	
award.....	104.13
rules respecting.....	108.51
fine—award.....	104.12
forfeiture of seniority—award.....	104.10
illegal—alteration and substitution of.....	114.25
imprisonment—	
award.....	104.05
hard labour—order respecting.....	114.28
suspension—	
authority for.....	114.35
conditions governing.....	114.36
time reckoned against completion of term.....	114.06
less punishment—definition.....	104.03
minor (see "Deprivation of Good Conduct Badges", "Stoppage of Leave", "Stoppage of Grog", "Extra Work or Drill not exceeding two hours a day", "Caution", "Extra Work and Drill".)	
mitigation.....	114.27
new—	
conditions governing.....	114.30
effect of.....	114.31
substitution for illegal.....	114.25
substitution when one not approved.....	114.26

Punishment—(Cont'd)

powers—	
commanding officer.....	108.27
delegated officer.....	108.11
Disciplinary Courts Martial.....	111.36
General Courts Martial.....	111.17
quashed findings—effect upon.....	114.16
reduction in rank—award.....	104.09
remission.....	114.27
scale of.....	104.02
stoppage of grog—	
award.....	104.13
rules respecting.....	108.50
stoppage of leave—	
award.....	104.13
rules respecting.....	108.49
warrants—	
endorsement by approving authority.....	108.41
form.....	108.39
preparation and submission.....	108.40

Punishment Warrant

endorsement by approving authority.....	108.41
form.....	108.39
preparation and submission.....	108.40

Quarrelling

offence.....	103.19, 103.20
--------------	----------------

Rank

how construed.....	101.02
reduction—punishment.....	104.09

Rape

offence—jurisdiction of service tribunal.....	102.23
---	--------

Receiving

offence.....	103.47
--------------	--------

Redress

false statements—offence.....	103.29
-------------------------------	--------

Reduction

punishment of.....	104.09
--------------------	--------

Re-Examination (See “Examination”)***Regulations***

breach of—how charged.....	103.60
----------------------------	--------

Reporter

oath to be taken by.....	112.17
swearing of.....	112.05

Resisting

escort—offence.....	103.20
person carrying out arrest—offence.....	103.35

Retaining

offence of.....	103.47
-----------------	--------

Rules of Evidence (See “Evidence”)**Scale of Punishments** (See “Punishment”)**Scandalous Conduct**

officers—offence.....	103.25
-----------------------	--------

Secondment (See “Officers” and “Men”)**Security**

offences related to.....	103.08
--------------------------	--------

Sedition

offence.....	103.15
--------------	--------

Self-Defence

as a defence.....	103.03
-------------------	--------

Selling

orders, decorations, and medals—offence.....	103.48
property—improperly—offence.....	103.48

Senior Officer in Chief Command—

commanding officer—authority to act as.....	101.01
committing authority.....	114.40
courts martial—convening.....	111.05
detention—suspension.....	114.35
findings—	
quashing.....	114.15
substitution.....	114.17
imprisonment—	
hard labour—prescription as to.....	114.28
suspension.....	114.35
logging.....	101.11
punishment—	
substitution of new for illegal.....	114.25
remission, commutation, and mitigation.....	114.27

Summary Trials—(Cont'd)

delegated officer—	
finding and sentence—	
determination of.....	108.15
irregularities in procedure—effect upon.....	101.06
pronouncement of.....	108.16
general rules for.....	108.13
jurisdiction.....	108.10
punishment—	
action when powers inadequate.....	108.14
powers.....	108.11
false evidence before—offence.....	103.51
joint trials.....	101.09
judicial notice.....	101.04
jurisdiction barred—	
previous trial for same offence.....	102.17
when sentence passed on admission of similar offence.....	102.18
offences in relation to.....	103.50
punishment—commencement.....	114.05
synopsis—reading of.....	109.03

Superior Officer

disobedience to lawful command of—offence.....	103.16
insubordination to—offence.....	103.18
insulting—offence.....	103.18
striking—offence.....	103.17
threatening—offence.....	103.18
violence against—offence.....	103.17

Synopsis

forwarding by convening authority.....	111.50
forwarding to higher authority.....	109.04
preparation and disposal.....	109.02

Theft

offence.....	103.46
receiving stolen goods—offence.....	103.47

Time Bar

Code of Service Discipline—period of liability.....	102.22
---	--------

Trials (See also “Courts Martial” and “Summary Trials”)

joint.....	101.09
jurisdiction—	
place.....	102.21
time.....	102.22
petition for new—	
disposition of.....	117.01
right to.....	117.01
unusual situations—procedure.....	101.07

Treason

offence.....	103.27
--------------	--------

Vaccination

refusal to submit to—offence.....	103.58
-----------------------------------	--------

Vehicles

improper driving—offence.....	103.43
unauthorized use—offence.....	103.44

Vessels

naval—offence in by members of army and air force—how dealt with....	102.07
civilians embarked in—status.....	102.10
hazarding, losing or stranding—offence.....	103.37
offences in relation to convoys.....	103.38
other services—offence in—how dealt with.....	102.06

Violence

against custodian—offence.....	103.20
against superior—offence.....	103.17

Warrant

arrest authorized by.....	105.10
arrest—form.....	105.11
punishment—	
endorsement by approving authority.....	108.41
form.....	108.39
submission.....	108.40

Witnesses

court martial—	
evidence—admissibility in proceedings against.....	112.71
examination of.....	112.31
fees and allowances.....	111.63
hostile.....	112.32
procuring.....	111.63
questioning on determination of finding.....	112.40
re-examination.....	112.33
responsibility to procure.....	111.62
swearing of.....	112.05
evidence on commission.....	112.70
false evidence—offence.....	103.51
incriminating questions—refusal to answer.....	112.71
oath taken by—form of—	
court martial.....	112.20
summary trial by commanding officer.....	108.29
summary trial by delegated officer.....	108.13
offences in relation to service tribunals.....	103.50
prosecution—accused to be informed of.....	111.64

Women

articles respecting—cross-reference.....	102.16
close custody—special conditions.....	105.25
Code of Service Discipline—application of.....	102.15
detention—not liable to.....	104.08

